

THE
ATTORNEY'S
Pocket Companion:

Or, A GUIDE to the
PRACTISERS of the LAW:
In Two PARTS.

Being a Translation of Law Proceedings
in the Court of *Common-Pleas*:

Containing
A Collection of the Common FORMS,
Beginning with the Original, and End-
ing with the Judicial PROCESS:

Together with
E X P L A N A T I O N S
On several &c's made Use of in the Proceedings.

• P A R T II.

By a Gentleman of the *Inner Temple*.

*Lex dudum pulchre sonuit sermone Latino,
Horrida jam Patrio claudicat icta pede,
Lingua Diserta vale!* —

LONDON Printed,
And Reprinted in Dublin, by and for Sam. Fair-
brother, Bookseller, and are to sold at his Shop
at the King's-Arms in Skinner-Row, opposite to
the Tholsel, 1734.

2000

6. *Chloris virgata* (L.) Pers. (Fig. 10)

THE HISTORY OF THE AMERICAN REVOLUTION

1814 FEB 11 BOSTON MASS 20 CENTS

10. *Leucosia* (Leucosia) *leucostoma* (Fabricius) (Fig. 10)

1860-1861. The first year of the new century.

1960-61: The first year of the new system of government.

10. *Leucosia* (Leucosia) *leucostoma* (Fabricius) (Fig. 10)

6. *Leucosia* (Leucosia) *leucostoma* (Fabricius) (Fig. 10)



THE
ATTORNEY's
Pocket Companion.

*Of the Returns of Writs in the
 Common Pleas.*

BEFORE I proceed to the Form Common and Manner of the Returns, I shall now here shew the Reason why I don't Pleas. call the Return, *In Octabis Santi Hilarii, in eight Days of Saint Hillary*, which is this; Because I don't see any Reason that our Laws, or the Practise of 'em, should in any one Instance, lie under the Imputation of an Absurdity, when there is no Necessity for the least Shadow of Absurdity to be thrown upon 'em, unless you will think it necessary *errare cum patribus.*

If I had promised to pay a Man twenty Pounds in *thonee Weeks of Christmas*, I dare say he'd think I broke my Word with him, if I made him stay *till tbree Weeks after Cbristmas*, before I paid him.

Therefore if there's no Necessity to translate it thus, in order to make it a true Translation, I think, I shall shew very good Authorities both from the Clasicks and the Law,

The Attorney's

to call *In Octabis Sancti Hilarii*, on the *Octave* of *Saint Hillary*, to justify this Translation.

In the first Place, the Word *Octaba* is Latin for the *Octave*, which Word signifies the ultimate Day of the *Octaves* or *eight Days of a Feast* continued for so long Time, including the Festival Day, and this Feast so continued was of Popish Institution, as most, if not all our other Feasts likewise were; the Reason whereof was, as Sir *Henry Spelman* tells us, and cites very good Authorities to warrant his Assertion, That *Festival and Fasting Days* were imposed on us by the Romish Church, and such other Provincials as were instituted by our antient Kings and Clergy, which Days were exempted from judicial Trials and Proceedings;

Hillary
Term.

Hillary Term antiently began in *Octabis Epiphanie*, which is the *thirteenth Day of January*, seven Days before the Return is now, and ended on the *Saturday next before Septuagesima*, which being moveable, made this Term longer some Years than others.

Easter
Term.

Easter Term, which now begins two Days after *Quindena Paschæ* began then, as the Law of *Edward the Confessor* appointed it, at the *Octave of the Feast of Easter*, which is said by him to be verified by *Glanvill*, who makes one of his Writs returnable on that Day. But as it began then nine Days sooner than it now doth; so it extended six or seven Days sooner, (that is to say) before the *Vigil of the Ascension-Day*.

Trinity
Term.

Trinity Term in those Days began as it now doth with Respect to the Time at *Octabas Pentecostes*, which being always the Day after *Trinity Sunday*, is now by the Statute of the 32d of *Henry the Eighth*, appointed to be called *Crastino Trinitatis*; and as to the Day of sitting to do Busines, it was by that Statute ap-

appointed to begin for ever the *Friday* after Com-
the Day of *Corpus Christi*, and to continue mon-
nineteen Days ; so that the Day of *Corpus Pleas.*
Christi being a moveable Feast. This Term
is uncertain as to its Station in the Year, and
the whole Frame of *Trinity Term* was by that
Statute alter'd to what we now find it.

Michaelmas Term; was by the Statute of 16
Car. 1. cap. 6. limited and abbreviated to what
we now find it, which before began on the
Octave of St. Michael, and two Returns were
by that Statute lopped off from the Beginning
of the Term, and by that Statute it is to be-
gin on the 23d Day of *October*, unless it hap-
pens on a *Sunday*, for then it is deferred till
the Day following ; and this *Octabis Sci.*
Michaelis is by *Sir Henry Spelman*, very truly
call'd the *Octaves of St. Michael*.

Michael-
mas
Term.

To enter into the Reasons of the Instituti-
ons of the Terms how they came to be alter'd,
and by what particular Statutes, is so accu-
rately handled by the before-mentioned Au-
thor, and is so little Necessary to my present
Purpose, that I shall here omit it.

And only *In the second Place* take Notice of
what Authorities I have from the Claslicks, to
call this Return *in Octabis Sci. Hillarii*, and
the rest under that Denomination, *at or on* the
Octave of the respective Feasts.

The Word *In* as a Latin Preposition, hath *The S*ame
been made Use of by *Plautus*, to signify *upon*, *nification*
as in the Phrase *in re presenti*, which is trans-*the Word*
lated *upon* the Place ; but generally when it *In*,
signifies *upon*, it is made use of in a compo-
tive Sense, as in the Words *irruo* to rush up-
on, *impono* to-put upon, *invoco* to call upon,
and it likewise is made Use of to signify our
Word *at*, and sometimes *within*, as *Virgil*
does in the Words *in triduo within three Dhs*,

The Attorney's

but in our Case, I apprehend the Word *upon* to be the best *English*, because the Writ is supposed to be returnable *upon the Octave, &c.*

This Word *Octave* carries with it a clear and significant Meaning, and when the Law was before in *English*, it was made Use of by *Hearne* in his Pleader, and by *Brownlow*; but sometimes they call'd the *Octave of St. Hillary*, the *Utas of St. Hillary*, and that Word is made use of in several Acts of Parliament, as in the Acts of 53 H. 3. Statutes 2 & 3; and if that should be esteem'd the best Expression, I have no Objection to it; but to say within *Eight Days of St. Hillary*, when the Meaning and the Truth of the Return is within *Eight Days from such Feast*, will not go down as common Sense.

Michaelmas Term contains five Weeks and two Days, and has six Returns, *viz.*

In three Weeks from the Day of St. Michael.

In one Month from the Day of St. Michael.

On the Morrow of All Souls.

On the Morrow of St. Martin.

On the Octave of St. Martin.

In fifteen Days from the Day of St. Martin.

Hillary Term contains three Weeks compleat, and hath four Returns, *viz.*

On the Octave of St. Hillary.

In fifteen Days from the Day of St. Hillary.

On the Morrow of the Purification of the Blessed Virgin Mary.

On the Octave of the Purification of the Blessed Virgin Mary.

Easter Term consists of three Weeks and six Days, and hath five Returns, *viz.*

In fifteen Days from the Feast Day of Easter.

In

In three Weeks from the <i>Feast-Day of Easter.</i>	Common
In one Month from the <i>Feast-Day of Easter.</i>	
In five Weeks from the <i>Feast-Day of Easter.</i>	
On the Morrow of the <i>Ascension of our Lord.</i>	Pleas.

Trinity Term wants one Day of three Weeks,
and hath four Returns, *viz.*

On the *Morrow of the Holy Trinity.*

On the *Ottave of the Holy Trinity.*

In fifteen Days from the Day of the *Holy Trinity.*

In three Weeks from the Day of the *Holy Trinity.*

The ancient Method of suing out Process, was by giving Instructions to the *Curſitor*, to make out and Seal an *Original* Issuing from the Court of *Chancery* Returnable in this Court, in order to give this Court a Jurisdiction; for this Court hath no Jurisdiction but by such *Originals*, except for Persons privileged in the same Court; as for the *Prothonotaries*, and their *Entering Clerks* and for *Attorneys*, and other *Officers* of the same, and that by immemorial Custom. This *Original* when sued out, was used to be carried to the Sheriff to have a Return made thereon, (who did it of Course) that the Defendant was not to be found in his *Balywick*, by which he could not be summoned or attacked, as the Case was.

And when this *Original* was so return'd, it used to be carried to the *Custos Brevium* of this Court, there to be filed in his Office as a Testimony, that this Court had a Jurisdiction to hold Plea of that Suit; and thereupon the *Plaintiff's Attorney* made out his Instructions to the *Filazer* for a *Capias* to be directed to the Sheriff, in order to have the Defendant arrested thereon.

But

Com-
mon
Pleas.
The pre-
sent prac-
tice.

But of latter Days, the Method has usually been (to prevent Trouble, and for the Ease of the Attorneys) for the Plaintiff's Attorney to make out Instructions for the *Capias*, and carry the same to the *Filazer*, who after having made out a Writ thereon, enters the same upon a Remembrance-Roll of that Term, and then delivers over such Instructions to the *Curritor*, and he makes out an *Original*, and then carries them altogether back to the *Filazer* of the proper County, who afterwards delivers them over to the *Customs Brevium*, and he files them of the proper Terms to which they belong.

The Form of these Instructions, if the Plaintiff proceeded by Special ORIGINAL, were as follows,

*The usual Middlesex ff. Precipe C. D. nuper de Westm' instruc- Gen' (alias diff' if any) quod reddit A. B. 40l. ons peren quas ei debet & injuste detinet. Cap' ret' Cro' before Anmar'.
n.sed.*

*Acetiam. If it was an *Acetiam* Writ for a Debt, not by Special Original, or in *Trespass* or *Trespass* upon the *Case*, then the Instructions were in the following Manner.*

The usual Middlesex, ff. Si A. B. fec' &c. pone, &c. C. D. Instruc- nuper de Islington in Com' tuo' Gen' Acetiam in- ons for a debito pro 40l. or, Acetiam in Casu sup' assump- Capias tiones, &c. pro 20l. as the Case was.

J. Cock.

*Anima-
rum.*

*But to avoid the Fine that is due upon a Special Original, the common Practice was to make out Instructions for a common *clausum regi*, with an *Acetiam* for so much as the*

Def.

Pocket Companion.

Debt was, which now by Means of the following Rule, supplies the Place of a Special mon Original. Please

For heretofore on every common *Classum* *fregit*, and *Acetiam* thereon, the Defendant was intitled to an Imparlane, (that is) to plead of another Term, than that in which the Declaration was delivered; but now it may be observed by this Rule, that Imparlanes are taken away.

Mich. the Third of King George the Second.

It is ordered, that upon all Proceses sued out of this Court, returnable the first or Second Return Court, of any Term; if the Plaintiff declares in London or Middlesex; and the Defendant lives within twenty Miles of London, the Defendant shall plead within four Days after such Declaration delivered, without any Imparlane, and such Declaration may be delivered *de bene esse*, and in Case the Plaintiff declares in any other County, or the Defendant lives above twenty Miles from London, the Defendant shall plead within eight Days after the Declaration delivered, without any Imparlane, and in Default of pleading as aforesaid, the Plaintiff may sign his Judgment.

And it is still very proper to avoid Confusion, that the Instructions for Common Writs and Special Writs, should be Variant and Distinct; as for Example:

Instructions for a Special Writ in Debt.

Debonopire: Command A. B. late of Sound-
Merton in your County, that he render to
C. D.

The Attorney's

C. D. ten Pounds, which he owes to, and unjustly detains from him.

*Returnable in three Weeks
from the Day of St. Michael.*

J. Cock.

*If more Defendants than one are in the Writ,
then it must be in this Manner.*

Devonshire. Command A. B. late of South-Molton in your County, Gent. that he render to C. D. ten Pounds, and command E. T. late of the same Place, Gent. that he render to C. D. twenty Pounds, which they severally owe to, and unjustly detain from him.

*Returnable on the
Octave of St. Hillary.*

J. Cock.

As to the Instructions for a Common Writ, with an *Acetiam* thereto, if literally translated, according to the Form heretofore used, it is thus.

Devonshire. If A. B. makes you secure in prosecuting his Claim, then by Pledges and sufficient Sureties, compel C. D. of Barnstable in your County, Gent. to answer to the said A. B. in a Plea of Trespass; and also to the said A. of a Plea of Trespass upon the Case, upon Promises and Undertakings, for twenty Pounds.

*Returnable in three Weeks,
from the Day of St. Michael.*

J. Cock.

But as Tempora mutantur & nos mutamur in illis, if it should be thought better that the ancient Forms, as to the Instructions for Writs may be altered, I submit whether the Instructions for a Common Writ may not be thus.

Devon-

Devonshire. *A. B.* against *C. D.* of *Barnstable* Com-
in the said County, Gent. of a Plea of *Trespass*; and
and also in a Plea of *Trespass on the Case*, on Pleas.
several Promises and Undertakings, for twenty
Pounds.

*Returnable in three
Weeks, from the Day
of St. Michael.*

J. Cock

*If it be against several Defendants, and there
are several Acquisitions, then say,*

*And also against A. B. of a Plea of Trespass
on the Case, for twenty Pounds, on several Pro-
mises and Undertakings. And against the said
C. D. of a Plea of Debt of twenty Pounds up-
on Bond (or for Money borrowed) or for
Rent, as the Case is.*

The Form of a Capias in Debt.

*GEORGE the second, by the Grace of God,
of Great-Britain, France and Ireland, King, De-
fender of the Faith, To the Sheriff of Norfolk,
Greeting: We command you, that you take
C. D. late of Thetford, in your County, Gent.
and E. F. late of Y. in your County, Yeoman,
if they are to be found in your Bailiwick, and
safely keep them, so that you have their Bo-
dies before our Justices at Westminster, on the
Morrow of all Souls, to answer to A. B. of a
Plea that he render to him fifty Pounds,
which he owes to, and unjustly detains from
him, and have you there this Writ. Witness
Sir Robert Eyre Knight, at Westminster, the
Twenty-eighth Day of June, in the sixth Year
of our Reign.*

If

10
Com-
mon
Pleas.
Trespass.

The Attorney's

If the Writ be in Trespass.

Then you say, in a Plea, wherefore with Force and Arms they broke the Close of the said A. and did other Wrongs to him, to the great Damage of the said A. and against our Peace.

Cases. *And if in Case. And also to answer the said A. according to the Custom of our Court of Common-Bench, in a Plea of *Trespass on the Case*, upon Promises and Undertakings, to the Damage of the said A. twenty Pounds;*

And if the Acetiam be only against one of the Defendants, then you say thus,

*Acetiam
against
trust.* *And also that the said C. shall answer to the said A. according to the Custom of our Court of Common-Bench, in a Plea of *Trespass on the Case*, upon Promises and Undertakings, to the Damage of the said A. twenty Pounds.*

If there are several Acetiams of different Natures against several Defendants, then thus,

*And also severally to answer C. D. according to the Custom of our Court of Common-Bench (that is to say) the said C. D. in a certain Plea of *Trespass on the Case*, upon Promises and Undertakings, to the Damage of the said A. twenty Pounds; And the said E. in a certain Plea of *Debt* for fifty Pounds upon Demand; and have you there, &c.*

If it be in Assault and Battery, say thus.

*And also to answer C. D. according to the Custom of our Court of Common-Bench, in a Plea of *Trespass and Assault*. The*

The Form of a special Original.

GEORGE the Second, King of Great-Britain, France, and Ireland, Defender of the Faith, and so forth, To the Sheriff of Devonshire, Greeting. If *A. B.* makes you secure in prosecuting his Claim, then put *C. D.* of Barnstable in your County, Gent. to find Pledges and sufficient Sureties that he be before our Justices at Westminster, on the Morrow of All Souls, to answer to *A. B.* of a Plea, that whereas the said *C.* on the first Day of May, in the Year of our Lord 1731, at Barnstable aforesaid, in your County, was indebted to the said *A.* (and then recite the Declaration to the Words) to the Damage of the said *A.* one Hundred Pounds, and then go on, And have you there the Names of the Pledges, and this Writ. Witness our self at Westminster, the 23d Day of October, in the sixth Year of our Reign.

The Form of a Special Capias differs not from a Common Capias, only in the Recital of the Declaration; so that instead of the Words, of a Plea, wherfore with Force and Arms he broke the Close of the Plaintiff, you say,

*Of a Plea, that whereas on the first Day of May, in the Year of our Lord 1731, the said *C.* was indebted to the said *A.* in the Sum of ten Pounds, for the like Sum lent by the said *A.* to the said *C.* at his special Instance and Request: And being so indebted, the said *C.* in Consideration thereof, afterwards (that is to say) on the said first Day of May, in the said Year of our Lord 1731, at Barnstable aforesaid, in the said County, undertook, and then and there faithfully promised the said *A.* that he the*

Com-
mon
Pleas.

the said *C.* would well and truly content and pay him the said *A.* the said ten Pounds, whenever after he the said *C.* should be thereto required. Nevertheless the said *C.* not regarding his said Promise and Undertaklng, made in the Manner as above, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said *A.* in this Particular, hath not paid him the said *A.* the said Sum of ten Pounds, or in any wise made him Satisfaction for the same (although the said *C.* on the said first Day of May, in the said Year, and ofteu afterwards at Barnstable aforesaid, was by the said *A.* thereto required,) but hither altogether hath, and still doth refuse to pay, or make him any Satisfaction for the same, to the Damage of the said *A.* twenty Pounds, as it is said. And have you there this Writ. Witness Sir Robert Eyre, Knight, at Westminster, the 23d Day of October, in the sixth Year of our Reign.

J. Cock.

If the Defendant lives in the Country ; as for Instance in *Suffolk*, and the Cause of Action arises in *London*, and therefore you would try the Cause there, then you must make out a *Testatum* into the County where the Party lives, by which it is suggested, that a *Capias* had before been taken out in *London*, and that the Sheriffs of *London* had made a Return thereto, that the *Defendant* was not to be found in their *Baliwick*, and that it was sufficiently testified, that the *Defendant* lurked, and wandered up and down in the County of *Suffolk*, so that when the *Defendant* is taken, he is to put in Bail with the *Filazer* of *London*, to answer to the *Plaintiff* upon the Writ made out there, and not in the County where the *Defendant* is taken ; and therefore the *Defendant's*

fendant's Attorney in such Case must be wary Com-
of this; for I my self know an Instance where mon
a Capias was taken out, directed to the She- Pleas.
riffs of *London*, and a *Testatum* issued upon that
Writ, directed to the Sheriff of *Suffolk*, upon
which the *Defendant* was arrested, and the
Defendant's Attorney caused the Bail-piece to
be filed with the Sheriff of *Suffolk* in due Time,
but the *Plaintiff's Attorney* took no Notice of
that Bail (nor am I certain whether he knew
of it) for the proper Office where he search-
ed, and where the Bail-piece should have been
filed, was with the *Filazer of London*; the
Plaintiff's Attorney got the Bail-Bond assign-
ed to the *Plaintiff*, and proceeded thereon, and
the *Plaintiff* being delayed of a Trial, the Bail
could never be let in to plead in the Original
Action; but the *Plaintiff* got Judgment upon
the Bail-Bond, and the Bail were forced to
pay the Money, and as I remember, the Debt
was two Hundred and odd Pounds, and what
was a greater Hardship in this Case, the *De-
fendant* was a Bankrupt, and they intended to
plead his Certificate; and this was the Case of
Stevens and Coxedge in Mich. the Second of
his present Majesty.

The Form of a *Testatum* is as follows.

George the Second, &c. going quite through
the *Acetiam*, till you come to the Words, to the
Damage of the laid A. twenty Pounds; then
you go on thus; and wheroof our Sheriff of
Suffolk hath made a Return to our Justices at
Westminster, at a certain Day now past, that the
said C. is not to be found in his Bailiwick; where-
as it is testified in our same Court, that the said
C. lurks and wanders up and down in your Coun-
ty; and have you there this Writ. Witness, &c.

If

The Attorney's

If the Defendant lived within a Liberty, which the Sheriff could not enter, the ancient Method of proceeding was ; the Sheriff, upon the *Capias* directed to him, made a Mandate to the *Bailiff* of the *Liberty* where the Defendant was ; and if the Defendant was not taken upon that Mandate, the Sheriff made a Return upon the *Capias* directed to him, that the Defendant was in such a *Liberty*, to the *Bailiff* of which he had made a Mandate to take the Defendant, and that the *Bailiff* had given him no manner of Answer thereto ; upon which his Majesty's Writ, called a *Non Omittas*, issued, by which the King commands the Sheriff not to pass by, but to enter into such *Liberty*, and take the Defendant, so that he might have his Body at the Day of the Return ; but the Method for Expedition's sake now is to make out a Writ of *Non Omittas* at once suggesting this Matter ; so the *Capias* and *Non Omittas* are made out at the same Time, and you return the *Capias* your-self.

The Form of which Non Omittas is as follows.

George the Second, by the Grace of God, of Great-Britain, France and Ireland, King, Defender of the Faith, and so forth, To the Sheriff of Suffolk, Greeting. We command you, that you do not pass by the *Liberty* of St. Ithelred in your County but that you enter therein, and take C. D. late of Thetford in the County of Norfolk, if he is to be found in your Bailiwick, and safely keep him, so that you have his Body before our Justices at Westminster, on the Morrow of all Souls, to answer A. B. of a Plea, wherefore with Force and Arms he broke the Close of the said A. at Thetford, and did other Wrongs to the said A. to his great Damage, and

and against our Peace; and also to answer the Com-
plaint of A. B. according to the Custom of our Court of Common Bench, in a Plea of *Trespass on the Pleas.*
Case, for Promises and Undertakings unper-
formed by the said C. to the Damage of the
said A. twenty Pounds; and inasmuch as you
have made a Return to our Justices at *West-
minster*, at a certain Day now past, that the Bai-
liff of the said Liberty (to whom, by Virtue of
our Writ to you directed, you had by your
Mandate commanded, that he should take the
said C.) had given you no Answer thereto; and have you there this Writ. Witness Sir
Robert Eyre, Knight, at *Westminster*, the 23d
Day of October, in the sixth Year of our Reign.

*The Manner of putting in Bail in the Common
Pleas in London or Middlesex, is not by filing
a Bail-Piece, but it is done by an Entry in the
Filazer's Book; tho' the Filazer's vary a little
in the Manner thereof; but in London the Man-
ner of the Entry is thus.*

*London. Capias Johannem Doe nuper de Lon-
don, Yeoman, ret' xv. Paschæ Ric'o Roe.*

*Manucapt. Johannes Denn de Breadstreet
London, Turner.*

*Ricardus Fenn de Friday-
street London, Packer.*

*Def. Manucepit in Ducentis
libris.*

*Uterque manucaptorem in
Centum libris.*

*Peter Burton Attorn. pro
Defend.*

*But now it is to be in English, I submit this
Method to the Consideration of those concerned
therein.*

London.

Com-

mon

Pleas.

The En-

try of the

Note of

the Bail.

London. On a Capias returnable on the Octave of St. Hillary, against John Doe, late of London Mercer, at the Suit of Richard Roe, the Bail are,

John Denn of Breadstreet London, Hosier,
and

Richard Fenn of Queenhithe London, Mealfactor.

The Defendant becomes Bound for himself in two hundred Pounds, each of the Bail in one hundred Pounds.

George Woodcraft Attorney
for the Defendant.

Taken and acknowledged
(to be perfected here-
after) the 18th Day of
December, 1732, before

R. Price.

So that you call upon the Filazer, and give him Notice when the Bail are ready, and he attends with you at the Judge's Chamber, and there the Bail enter into a Recognizance, and all the Note or Entry made of it is, that before mentioned, made in the Filazer's Book; but if *Nul tiet Record* be pleaded in an Action of Debt, or to a *Scire Facias* on that Recognizance; then the Filazer draws you up a Form of the Entry of the Recognizance, which you make Use of to verify the Record; and the Condition of the said Recognizance is as follows.

You (naming the Defendant if present) do acknowledge to owe unto the Plaintiff twenty Pounds, and you (naming the Bail) do severally acknowledge to owe unto the same Person, the Sum of ten Pounds apiece, to be levied upon your several Goods

Goods and Chattles, Lands and Tenements, upon Condition, that if the Defendant be condemned in the said Action, he shall pay the Condemnation Pleas, Money, or render himself a Prisoner into the Fleet for the same; and if he fail so to do, you (naming the Bail) do undertake to do it for them.

Concerning Bails to be taken in the Country, the following Rule was made.

Termino Pasch. 5 Gul. & Mariæ.

ORDERS to be observed by Commissioners empowered by Commission, in Pursuance of an Act of Parliament, for taking Special Bail in the Country upon Actions and Suits depending, or to be depending, in His Majesty's Court of Common Pleas at Westminster.

FIrst, It is ordered, That before any Bail be taken by Vertue of the said Act, a true Copy of the Writ on Parchment, to which the Defendant is to put in Bail, shall be brought to the Commissioner before whom such Bail is to be taken; and thereupon the Recognizance or Bail-piece, shall be fairly drawn and engrossed on the said Parchment Copy, in this or the like Form, as the Case shall be, (*viz*)

*A. B. Attorn
pro defend'*

*Mancaptores. Johannes Denn
de Blackbarnefly in Parochy
d' Settle in Com' E Gen' &
Rich'us Fenn de eadem Gen'.*

*Capt' & cognit' decimo
die Martii Anno
Dom' 1720. de bene
esse coram me A. B.
un' Commissionar'.*

*Pars ip'sa in
20 l. uterque
M. in 10 l.*

If

The Attorney's

Com-
mon
Pleas.

If the Defendant be not present, then the Bail are usually bound in double the Sum in the Writ, otherwise only single.

The Condition of which said Recognizance shall be to this Effect, *viz.*

You [naming the Defendant, if present] do acknowledge, &c. as before.

Secondly, It is ordered, That the Affidavit of the due Taking of every such Bail, shall be made either before some Judge of the Common Pleas, to whom the Bail shall be transmitted, or before some Person, who shall have Power to take Affidavits in Matters and Causes depending in the said Court.

Bail taken
within
forty
Miles of
London,
transmit-
ted in ten
Days.

If above
forty
Miles, in
twenty
Days.

Thirdly, It is ordered, That all Bails taken by any Commissioner within the Distance of forty Miles from the Cities of *London* and *Westminster*, shall be transmitted to the Lord Chief Justice of the Court of Common Pleas, or to one of the Justices of the said Court, within Ten Days after the Taking thereof; and all Bails taken by any Commissioner above the Distance of forty Miles from the said Cities of *London* and *Westminster*, shall be transmitted within twenty Days after the Taking thereof, unless all the said Justices shall be in their Circuits, and then as soon as any of them shall be returned to *London* out of his Circuit.

Fourthly, Also every Commissioner is to have a Book kept purposely for entring exactly the Names of the Defendant and his Bail, and of the Plaintiff, as it is in the Bail-Piece, and the Time of the Taking thereof, and the Name of him by whom such Bail shall be transmitted.

Fifthly,

Fifthly, It is further ordered, That the Plaintiff's Attorney shall be at Liberty to repair to the Commissioner's Book for the Names of the Bail, to the End that they may enquire of the Sufficiency of them; and if they are found insufficient, they may except against them-within twenty Days after the said Bail is transmitted, and Notice to the Plaintiff or his Attorney of the Taking thereof: And in that Case the Defendant must either put in better Bail, or the Cognizors of such Bail must justify themselves in open Court, either by Affidavit taken before such Commissioner that took the said Bail, or by Oath made in Court, or before one of the Judges of the said Court.

Geo. Treby.
Edw. Nevill.
John Powel.
Tho. Rokeby.

By a Rule made *Hill. 6 Georgii*, It is further ordered, That all Bail-Pieces, taken within such respective Distance, as is above directed, shall be transmitted within the Time above limited, and after such Transmission, shall be forthwith deliver'd to, and filed with the proper Officer, to be entered upon Record, or otherwise it shall be as no Bail; and the Plaintiff is at Liberty to proceed on the Sheriff's Bail-Bond, as if no such Bail were ever put in. And the Defendant, in Case he be admissible to plead to the original Action, shall not be admitted so to do, unless he first pay the full Costs to the Plaintiff for the Prosecution on the Bail-Bond; and plead as of the Time when the Bail should have been duly entered.

If the Defendant does not put in special Bail (when required by these Rules) you may

*Bail-
piece to be
filed.*

The Attorney's

get the Sheriff to assign over his Bond, and take out the *Capias* upon it, a Copy of which you personally serve on the Defendants.

*The Form of an Entry of a Recognizance of
Bail in Case.*

Middlesex. The Sheriff was commanded, that he should take *Martha Lundie*, late of *Westminster*, in your County, Widow, if she could have been found in your Bailiwick; and that he should have kept her safely, so that he might have had her Body at this Day, (that is to say) on the Morrow of *All-Souls*, to answer *Robert Petre* of a Plea, wherefore she broke the Close of the said *Robert*, with Force and Arms, and did other Wrongs to the said *Robert*, to his great Damage, and against the Peace of our Sovereign Lord the King; and also in a Plea of *Trespass upon the Case*, on Promises unperform'd, to the Damage of the said *Robert* thirty Pounds. And now here at this Day, *Joseph Summers* of *Yorkstreet in Covent-Garden*, in the said County, Gentleman, and *Alicia Arthur* of *St James's-street*, in the said County *Spinster*, come in their Persons before Sir *Robert Eyre*, Knight, and his Companions Justices of this Court of *Common-Bench*: And they and each of them acknowledge themselves to owe to the said *Robert* the Sum of thirty Pounds; which said Sum they the said *Joseph* and *Alicia* do, and each of them doth, will and grant, for them and their Heirs, to be made and levied of their, and each of their Lands and Chattels, to the Use and Behoof of the said *Robert*; and also at the same Day, the said *Martha* comes in her proper Person before the same Justices, and acknowledges to owe to the said *Robert* the Sum of sixty Pounds; which

which said Sum of sixty Pounds the said *Com-Martha*, for herself and her Heirs, doth will mon and grant for herself and her Heirs, to be Pleas made and levied of her Lands and Chattels, to the Use and Behoof of the said *Robert*, sub-ject to this Condition, that if Judgment should happen to be given in the same Court here, for the said *Robert*, against the said *Martha*, in a certain Plea of *Tre'pass upon the Case*; then the said *Martha* shall make Satisfaction to the said *Robert*, for all such Damages which shall be awarded to the said *Robert* in the same Court here against the said *Martha*, or will render her Body, in Execution of the said Judgment, to the Prison of the Fleet, and so forth.

Rules and Orders lately made con-cerning Bails.

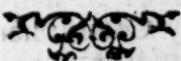
Communi Banco.

Trinity Term, the 3d and 4th of King George the Second.

It is ordered, That from and after the last Day of this present Term, if special Bail put in by the Defendant, be excepted to, the Defendant shall perfect his Bail within four Days after such Exception taken, in Default whereof the Plaintiff may proceed upon the Bail-Bond.

*Special
Bail to be
perfected
four Days
after Ex-
ception.*

Per Cur'



Com-
mon

Pleas.

Bail taken
by Com-
missioners
to be
transmit-
ted in 10
Days, if
within
40 Miles
of Lon-
don, and
20 Days
if above.Other-
wise shall
not be re-
ceived or
filed
without
leave of
the Court.

Communi-Banco.

Michaelmas Term, in the 6th Year of the Reign
of our Sovereign Lord King George the Second.

1. **W**Hereas, by a Rule of this Court, made in Hillary Term in the sixth Year of the Reign of the late King George the First, It was among other Things Ordered, That all Bails taken by Commissioners, pursuant to the late Act of Parliament, for taking special Bails in the Country, should be transmitted to the Lord Chief Justice, or to one of the Justices of this Court, *viz.* Every Bail taken within 40 Miles of London, within 10 Days after the Caption thereof, and every Bail taken above 40 Miles from London, within 20 Days after the Caption thereof, unless all the Justices should be in their Circuits, and then as soon as any one of them should be returned out of his Circuit, and after such Transmission, should be forthwith delivered to, and filed with the proper Officer to be entered upon Record ; or otherwise it should be as no Bail ; and the Plaintiff at Liberty to proceed on the Sheriff's Bond, as if no such Bail were ever put in. And whereas the said Rule hath proved ineffectual, and several Abuses are daily committed by Defendants Attornies suppressing such Bails, or neglecting to file the same by the Time limited in the said Rule, to the manifest Wrong and Injury of the Plaintiffs in such Actions, and in Contempt of this Court ; now for the remedying thereof, It is Ordered, That from and after the last Day of this present Michaelmas Term, all Bails taken before any Commissioner in the Country shall be transmitted and filed with the proper Officer, according to the said Rule, and

and that no such Bail shall be received or filed, Com-
unless the same be transmitted within the re- mon
spective Times appointed by the said Rule, Pleas.
without Leave of this Court first had and ob-
tained.

Per Cur^r

Communi Banco.

The same Term.

2. **W**Hereas it has been usually practised *Th^r the*
in this Court in all Cases where Bail- *Bail taken*
Bonds have been taken, that if the same Bail *by the*
taken by the Sheriff be put in above, that *Sheriff*
such Bail shall not be excepted against, but *be put in*
shall stand good and absolute; and whereas *above, yet*
such Practice hath been found to be Inconve- *they may*
nient in many Instances, *It is therefore Order-*
ed by the Lord Chief Justice, and the rest of
the Justices of this Court, that from and after *be except-*
the last Day of this present Term in all Cases *ed against*
wherein Bail-Bonds shall be taken, and the *ed against*
same Bail is put in above, the Plaintiff may
except against such Bail.

Per Cur^r.

Communi Banco.

The same Term.

3. **I**t is Ordered by the Lord Chief Justice, *No Attor-*
and the rest of the Justices of this Court, *ney to be*
That from and after the last Day of this Term *Bail.*
no Attorney of this, or any other Court, or
any Person practising as such, shall be Bail in
any Suit or Action depending in this Court.

Per Cur^r.
Communi

Com-
mon
Pleas.

Communi Banco.

The same Term.

Bail on
Writs of
Error to
be per-
fected in
four Days.

4. **W**Hereas the Rule made in *Trinity Term*, in the Third and Fourth Years of his present Majesty's Reign, for obliging Defendants to perfect their special Bail within four Days after Exception taken, has answered the Ends for which it was made; but no Provision has yet been made, touching Bail put in on Writs of Error: *It is therefore Ordered*, That in all Cases where Bail shall be filed on Writs of Error, such Bail shall likewise be perfected within four Days after Exception taken thereto, or in Default thereof the Clerk of the Errors of this Court shall *Non-Pros* such Writ of Error.

Per Cur'.

Communi Banco.

The same Term.

No Bai-
liff, &c.
shall be
Bail in
any Ac-
tion.

5. **W**Hereas many Inconveniencies happen in Causes depending in this Court, by reason that Sheriffs Officers, Bailiffs, and other Persons concerned in the Execution of Process, offer themselves, and are permitted to be Bail in many Actions, and for great Sums of Money; now for Prevention of the like Mischief and Inconveniencies for the future: *It is Ordered* by the Lord Chief Justice, and the rest of the Justices of this Court, that from and after the last Day of this present Term, no Sheriff's Officer, Bailiff, or other Person concerned in the Execution of Process shall

shall be permitted or suffered to become Bail Com-
in any Action or Suit depending in this mon-
Court. Pleas.

Per Cur'.

It will not be thought, I hope, unnecessary, before I proceed, to insert Precedents for Declarations, to take Notice of the Alteration the Law has received by several Acts of Parliament, and the Practise thereof as to this Court, by several Rules of Court made for that Purpose.

By the Act of the 12th of the late King George, Entitled, *An Act to prevent frivolous and vexatious Suits*; 'none are to be held to Bail in a Superior Court under ten Pounds, nor in an Inferior Court under forty Shillings; but the Defendant is only to be served with a Copy of the Process, and on his not appearing thereto, within four Days after such Return, the Plaintiff's Attorney may enter a Common Appearance, or file Common Bail for him, and proceed thereon, as if such Defendant had entered a Common Appearance, or filed Common Bail.

And where the Cause of Action amounts to the Sum of Ten Pounds or forty Shillings respectively, Affidavit shall be made of, and filed, of such Cause of Action, and the Sum specified in such Affidavit, is to be indorsed on the Back of such written Process, for which Sum the Sheriff, or other Officer, to whom such Writ or Process shall be directed shall take Bail, and for no more; and where the Sum is not indorsed, the Party shall be served with a Copy of the Process only.

And no *Habeas Corpus* is to be where the *Habeas Action* does not exceed the Sum of five Pounds.

Common
Pleas. 11 Pounds, tho' there may be other Actions
against the same Defendant for more.'

By an Act of the 5th of King George the Second, it is enacted, ' That after the End of this Session of Parliament, in all Cases where the Cause of Action shall not amount to the Sum of ten Pounds or upwards in any Inferior Court, the Writ, Process, Declaration, and all other Proceedings, shall be in the English Tongue, and written in Words at Length in a common legible Hand; and the Defendant in such Cases (a Copy of such Process in English having been served, as by the said Act is directed,) shall appear at the Return thereof, or within eight Days after such Return; and the Affidavit of the Service of such Process may be made before any Judge or Commissioner of the Court, out of which such Process shall issue, authorized to take Affidavits in such Courts, or before the proper Officer, for entring common Appearances in such Courts, or his lawful Deputy, and the Affidavit shall be filed *Gratis*.

' No Attorney, Bailiff, or other Person shall take or demand more than five Shillings, for making and serving a Copy of such Process out of any Superior Court, or more than one Shilling out of an Inferior Court.

' In particular Franchises and Jurisdictions, the proper Officer there shall execute such Process.

' Upon every Copy of such Process shall be written in like Manner an English Notice to such Defendant, of the Intent of such Service to the Effect following, (that is to say) *A. B. you are served with this Process to the Intent, that you may by your Attorney appear in his Majesty's Court of* at the Return thereof being the Day of in order

order to your Defence of this Action; and for Com-
mon
which said English Notice, no Fee or Reward
Pleas.
shall be demanded or taken.

After the End of this present Session of
Parliament, where the Cause of Action shall
not amount to ten Pounds or upwards, in any
Superior Court, or to forty Shillings or up-
wards in any Inferior Court, no special Writ,
nor any Process, specially therein expressing
the Cause of Action, shall be sued forth,
in order to compel any Person to appear
thereon in such Court; and all Proceedings
and Judgments that shall after the End of
this Session be had on such Writ or Process,
shall be void, and of none effect. And every
Attorney or Officer of such Court, suing or
issuing such Writ or Process, shall forfeit ten
Pounds to the Person aggrieved thereby, who
may recover the same by Action of Debt,
Bill, Plaintiff, or Information in any Court of
Record at Westminster with full Costs of Suit,
and no Essoin, Protection, or Wager of Law,
or more than one Impariment shall be allow-
ed. The said Act, except wherein the same
is hereby explained and amended, shall be
continued together with this Act, from the
End of this Session of Parliament for seven
Years, and from thence to the End of the
their next Session of Parliament, and no
longer.

Note; Long before this Act of Parliament,
the Judges of this Court had already provid-
ed against that Mischief, for which the Remedy
was intended in that Clause, where no spe-
cial Writs are to be sued out for Sums under
ten Pounds, by a Rule far more Extensive, and
providing a far better Remedy for the Bene-
fit of the Subject, than this Clause, which is as
follows.

Mich. tertio Georgii Secundi Regis.

IT is Ordered, That upon all Process sued out of this Court, returnable the first or second Return of any Term, if the Plaintiff declares in London or Middlesex, and the Defendant lives within twenty Miles of London, the Defendant shall plead within four Days after such Declaration delivered, without any Imparlane; and such Declaration may be delivered *de bene esse*, and in Case the Plaintiff declares in any other County, or the Defendant lives above twenty Miles from London, the Defendant shall plead within eight Days after the Declaration delivered, without any Imparlane; and in Default of pleading, as aforesaid, the Plaintiff may sign his Judgment.

R. Eyre.

Ro. Price.

Aler. Denton.

J. Fortescue A.

Another Rule made concerning Declarations is as follows.

Paschæ tertio Georgii Secundi Regis.

IT is Ordered, That all Declarations in London or Middlesex, delivered pursuant to the Rule of this Court made the last Day of Michaelmas Term, on Process returnable the first or second Returns of any Term, where the Defendant lives within twenty Miles of London, shall be delivered with Notice, that the Defendant or Defendants plead to such Action within four Days after such Declaration.

tion deliver'd, and that all Declarations where the Plaintiff declares in any other Country, or the Defendant lives above 20 Miles from London, such Declaration shall be deliver'd, with Notice to plead, within eight Days after such Declaration deliver'd; the Rule made in *Michaelmas Term* in the first Year of the Reign of his present Majesty, to establish the Practice of the Court upon the late Act of Parliament to the contrary, notwithstanding.

R. Eyre.

Ro. Price.

Alex. Denton.

J. Fortescue A.

The Rule of Court of *Michaelmas Term* the first Year of the late King, to which the last mention'd Rule refers, is as follows.

Termino Sancti Michaelis Anno Primo Georgii Secundi Regis.

To establish the Practice of this Court upon the late Act of Parliament, for preventing frivolous and vexatious Arrests.

It is Ordered, That from and after the last Day of this present Term, in all Causes where a Copy of the Process of this Court is served upon any Defendant, or Defendants, and an Appearance is entered for such Defendant, or Defendants, by the Plaintiff's Attorney, pursuant to the said Act, the Plaintiff's Attorney in such Case, shall leave a Copy of the Declaration in the Office, and likewise give Notice thereof to the Defendant, or Defendants, by delivering an English Notice, written in Secretary Hand, to such Defendant, or Defendants, or leaving the same at the last, or most usual Place of Abode of such Defendant.

The Attorney's

Common
Pleas.

Defendant, or Defendants, signifying the Nature of the Action, at whose Suit it is prosecuted, and in whose Office such Declaration is left: And that in Case of *special Writs*, returnable the *first Returns* of *Hilary* and *Trinity Terms*, and the *first and second Returns* in *Easter* and *Michaelmas Terms*, such Defendant, or Defendants should take Notice, that unless such Defendant or Defendants plead to such Action within *four Days* after the Appearance Day of the Return of such Writ: And in Case of a *common Capias*, or any other *special Writ*, within the first *four Days* of the next Term, Judgment will be entred against such Defendant or Defendants by Default: And from the Time of giving such Notice as aforesaid, such Declaration shall be deemed well deliver'd to such Defendant or Defendants, and not otherwise.

And in case such Defendant, or Defendants, after such Notice given, does not plead by the Time the Rules for pleading are out, the Plaintiff in such Case may sign his Judgment, (*a Rule to plead being first given*) without any other or further calling for a Plea, and thereon give Notice of executing his Writ of *Inquiry*, either by delivering Notice in Writing to such Defendant, or Defendants, or by leaving the same at the last, or most usual Place of Abode of such Defendant, or Defendants; which shall be a sufficient Notice to such Defendant or Defendants, of the Time of executing such Writ of *Inquiry*.

And it is further Ordered, That from and after the last Day of this present Term, the Rule made the last *Trinity Term*, to establish the Practice of the Court upon the said late.

late Act of Parliament, shall be discharged? Com-

mon
Pleas.

R. Eyre.

Rib. Price.

Alex. Denton.

S. Cowper.

lest I should be condemned for a needless Repetition, I have omitted to insert the *Declarations on common Assumpsits*, because I have before inserted them among the Proceedings in the King's Bench, and the Alteration is no more than in this Manner.

Declarations in Case.

London — A. B. late of the Parish of St. Michael Queenhithe, London, was attach'd to answer to C. D. of a Plea of Trespass upon the Case, and so forth; and the said C. by John Cock, his Attorney, complains, that whereas the said A. on the tenth Day of March, in the Year of our Lord One thousand seven hundred and thirty-one, at the Parish of St. Mary le Bow, in the Ward of Cheap, London, made a certain promisory Note in Writing, and subscribed his Hahd-writing thereto; and deliver'd the same to the said C. by which he promised to pay to the said C. or to his Order, Twenty Pounds of lawful Money of Great Britain, one Month after Date, for Value receiv'd; by Reason of which, and by Force of the Statute in that Case made and provided; the said A. became liable to pay to the said C. the said Twenty Pounds, at the Time in the said Note for that Purpose limited and appointed; and being so indebted, the

*A Decla-
ration upon
the Case, and so forth; and the said C. by John Cock, his Attorney, complains, that whereas the said A. on the tenth Day of March, in the Year of our Lord One thousand seven hundred and thirty-one, at the Parish of St. Mary le Bow, in the Ward of Cheap, London, made a certain promisory Note in Writing, and subscribed his Hahd-writing thereto; and deliver'd the same to the said C. by which he promised to pay to the said C. or to his Order, Twenty Pounds of lawful Money of Great Britain, one Month after Date, for Value receiv'd; by Reason of which, and by Force of the Statute in that Case made and provided; the said A. became liable to pay to the said C. the said Twenty Pounds, at the Time in the said Note for that Purpose limited and appointed; and being so indebted, the*

Com-
mon
Pleas.

*Another
against
the De-
fendant
as Draw-
er, pay-
able in
Demand,
That A.
made a-
nother
Note for
100 l.
thereby
promising
to pay the
same on
Demand.*

*Another
Declar-
tion a-
gainst the
Defen-
dant, as
Indorser.
That G.
made
a Note for 50 l. payable to A. That A. indor'd it
to C.*

said A. in Consideration thereof, the same Day and Year abovemention'd, at the Parish and Ward aforesaid, undertook, and faithfully promised the said C. that he would well and truly pay him the said Sum of Twenty Pounds mention'd in the said Note, at the Time for that Purpose therein limited and appointed. And whereas also the said A. afterwards, (that is to say) on the tenth Day of *April*, in the Year of our Lord One thousand seven hundred and thirty-two, at *London* aforesaid, in the Parish and Ward aforesaid, made another promissory Note in Writing, bearing Date the Day and Year last above-mention'd, and subscribed the same with his own Hand, and deliver'd it to the said C. and thereby promised to pay to the said C. One Hundred Pounds, of like lawful Money of *Great-Britain*, on Demand, for Value receiv'd; by reason whereof, and by Force of the Statute in that Case made and provided, the said A. became liable to pay to the said C. the said One Hundred Pounds upon Demand; and being so liable, the said A. afterwards (that is to say) the same Day and Year, at *London* aforesaid, in the Parish and Ward aforesaid, in Consideration thereof, undertook, and faithfully promised the said C. he would well and truly pay him the said One hundred Pounds whenever he should be thereto required. And whereas one G.F. afterwards, (that is to say) the tenth Day of *May*, in the said Year of our Lord One Thousand Seven Hundred and Thirt-Two, made his promissory Note in Writing, bearing Date the Day and Year last mention'd, and subscrib'd the same with his own Hand, and deliver'd it to

the

*a Note for 50 l. payable to A. That A. indor'd it
to C.*

the said *A.* and thereby faithfully promised, Com-
that he the said *G.* would pay to the said *A.* mon
or Order, fifty Pounds, six Weeks after Date, Pleas.
for Value received: And afterwards, and be-
fore Payment of the said fifty Pounds, or any
Part thereof, to the said *A.* (that is to say) on
the tenth Day of *June*, in the Year aforesaid,
at the Parish and Ward aforesaid, the said *A.*
by an Indorsement on the said Note in Writ-
ing, bearing Date the Day and Year last men-
tion'd, subscribed with the Hand-writing of
the said *A.* directed and appointed the said *G.*
to pay the Contents of the said Note to him
the said *C.* or his Order, for Value receiv'd.
And the said *C.* saith, That in Fact, he the said
C. after the Expiration of the said six Weeks
after the said Date of the said Note, (that is to
say) the first Day of *July*, in the Year afores-
aid, at the Parish and Ward aforesaid, shewed
the said *G.* the said Note, with the said Indor-
sement thereon, and required the said *G.*
to pay him the said *C.* the said fifty Pounds
therein contain'd, according to the Tenor of
the said Note and Indorsement thereon made
as aforesaid; but he the said *G.* then and there
refused to pay the same to the said *C.* of which
the said *A.* afterwards, (that is to say) the said
first Day of *July*, in the Year aforesaid, at the
Parish and Ward aforesaid, had Notice; by
reason whereof, and by Force of the Statute
in that Case made and provided, the said *A.*
became liable to pay to the said *C.* the said fif-
ty Pounds, mention'd in the said last mention'd
Note, and being so liable, the said *A.* after-
wards, (that is to say) on the First Day of *July*,
in the said Year of our Lord, at *London* aforesaid,
in the Parish and Ward aforesaid, in Con-
sideration thereof, undertook, and faithfully
promised the said *C.* that he the said *A.* would
well

Common
Pleas.

Another
Declar-
tion a-
gainst the
Defen-
dant, as a
Second In-
dorser.
That J.
M. made
a Note
payable
to S. T.

well and truly pay him the said fifty Pounds whenever after he should be thereto required. And whereas, the tenth Day of *August*, in the said Year of our Lord One Thousand Seven Hundred and Thirty-two, at the Parish and Ward aforesaid, one *J. M.* made a promissory Note in Writing, bearing Date the Day and Year last mention'd, and subscribed the said Note with his own Hand, and deliver'd the same to one *S. T.* and thereby promised to pay to the said *S. T.* or Order, One Hundred Pounds of like lawful Money of *Great-Britain*, one Month after Date, for Value receiv'd. And the said *S. T.* before Payment of the said last mention'd Sum, or any Part thereof, by his Indorsement in Writing upon the said Note, bearing Date the Day and Year last mention'd, subscribed with his own Hand at *London* aforesaid, in the Parish and Ward aforesaid, appointed and directed the said *J. M.* to pay the said One Hundred Pounds mention'd in the said Note to one *W. L.* or his Order, for Value receiv'd. And the said *W. L.* afterwards, and before the Expiration of the said Month, after the Date of the said Note, and before Payment of the said One Hundred Pounds therein mention'd, or any Part thereof, by another Indorsement in Writing, bearing Date the Day and Year last above mention'd, subscrib'd with his own Hand, at *London* aforesaid, in the Parish and Ward aforesaid, appointed and directed the said *J. M.* to pay the said One Hundred Pounds to the said *A.* at the Time in the said Note for that Purpose limited and appointed; And the said *A.* afterwards, and before the Expiration of the said Month, after the Date of the said Note, and before Payment of the said One Hundred Pounds therein mention'd, or any Part thereof

of

of, by another Indorsement in Writing, bearing Date the Day and Year last above-mention'd, subscribed with his own Hand, at London aforesaid, in the Parish and Ward aforesaid, appointed and directed the said *J. M.* to pay the said One Hundred Pounds to the said *C.* at the Time in the said Note for that Purpose limited and appointed; of which several Indorsements afterwards, the said tenth Day of *August*, in the Year last abovemention'd, the said *J. M.* had Notice at London aforesaid, in the Parish and Ward aforesaid. And the said *C. D.* in Fact says, That afterwards, and at the Expiration of one Month from the Date of the said Note last mention'd, (that is to say) on the twelfth Day of *September* following, at the Place aforesaid, he the said *C. D.* shew'd the Note, with the several Indorsements abovemention'd, thereon made and subscribed, to the said *J. M.* and then and there requested him to pay the said Sum of Money contain'd in the said Note, to the said *C. D.* according to the Tenor and Purport of the same; but he the said *J. M.* then and there refused to pay the same; of which the said *A.* afterwards, (that is to say) the Day, Year, and Place last abovemention'd, had Notice from the said *C.* (and the said Sum of Money mention'd in the said last mention'd Note, or any Part thereof, not having been paid either by the said *J. M.* or by the said *S. T.* or by the said *W. L.*) by reason thereof, and by Force of the Statute in that Case made and provided, the said *A.* became liable to pay to him the said *C.* the Sum of Money contain'd in the said Note; and being so liable, the said *A.* afterwards, (that is to say) the same Day and Year last above-mentioned, at London aforesaid, in the Parish and Ward aforesaid, undertook, and faithfully promised

promised to pay to the said *C.* the said Sum last mention'd, whenever he should be thereto required. Nevertheless, the said *A.* not regarding his said several Promises and Undertakings, but contriving, and fraudulently intending to deceive and defraud the said *C.* hath not paid him the said several Sums of Money, or any Part thereof; altho' the said *A.* afterwards, (that is to say) the said Day and Year last abovemention'd, and oftentimes afterwards, at *London* aforesaid, in the Parish and Ward aforesaid, was by the said *C.* thereto required; but the said *A.* hitherto hath, and still doth refuse so to do, whereby the said *C.* saith, that he is injur'd and endamaged to the Value of five hundred Pounds; and therefore brings this Suit, *and so forth.*

Morton against Sleddall.

Declar-
tion upon
a Bill of
Exchange
against
the Draw-
er, the
Person
upon
whom it
was
drawn
refusing
to accept
it, Lilly
44.

Midd. (to wit); *John Morton* complains of *John Sleddall* in the Custody of the Marshal, and so forth, for that whereas the said *John Sleddall* on the 13th of April, in the Year of our Lord One Thousand Seven Hundred and Seventeen, at *Westminster* in the said County, (he then being a Person trading, merchandizing, and using Commerce, at *Westminster* aforesaid,) according to the Usage and Custom of Merchants, made his certain Bill of Exchange in Writing, subscribed with his own Hand, bearing Date the same Day and Year, and directed the said Bill of Exchange to *Kingsmill Eyre*; by which said Bill of Exchange, the said *John Sleddall* required the said *Kingsmill* to pay to one *Thomas Pipon*, or to his Order, the Sum of Twenty Pounds, Twenty Days after Sight of the said Bill, Value receiv'd, and to place it to the Account of Subsistence,

sistence, for the Use of Captain Spicer's Company of Invalids; which said *Thomas Pipon*, afterwards, (to wit) on the 14th Day of May, in the said Year of our Lord, at *Westminster* aforesaid, by his Indorsement upon the same Bill of Exchange, made according to the Usage and Custom of Merchants, order'd the Contents of the said Bill to be paid to one *John Vowler*, or to his Order; which said *John Vowler* afterwards, (to wit) on the 27th Day of May, in the Year aforesaid, at *Westminster* aforesaid, by his Indorsement upon the same Bill of Exchange made, according to the Usage and Custom of Merchants, ordered the Contents of the same Bill, to be paid to the said *John Morton*, or to his Order: And the said *John Morton* in Fact says, that afterwards, (to wit) on the first Day of June, in the Year above-said, at *Westminster* aforesaid, he shewed the said *Kingsmill Eyre* the said Bill, with the said Indorsements thereupon made, and then and there required him to accept the said Bill, which the said *Kingsmill* then and there refused to do, or ever to pay the said Twenty Pounds therein mentioned; of which Premises, the said *John Sleddall* afterwards, (to wit) on the eighth Day of June, in the Year aforesaid, at *Westminster* aforesaid, had Notice, by Reason of which Premises, he the said *John Sleddall*, according to the Usage and Custom of Merchants, became, and is chargeable to pay to the said *John Morton* the said Twenty Pounds mentioned in the said Bill of Exchange. And the said *John Sleddall*, being so chargeable, afterwards, (to wit) the same Day and Year at *Westminster* aforesaid, in Consideration thereof, undertook, and to the said *John Morton* then and there faithfully promised, that he the said *John Sleddall* would well and truly

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truly content and pay to the said *John Morton* the same twenty Ponnds. And also whereas the said *John Sleddall*, on the 30th Day of *August*, in the Year aforesaid, was indebted to the said *John Morton*, in Eighty Pounds, for Money by the said *John Sleddall* before that Time received, to the Use of the said *John Morton*; and being so indebted, the said *John Sleddall*, the Day and Year last aforesaid at *Westminster* aforesaid, in Consideration thereof, undertook, and then and there faithfully promised to the said *John Morton*, that he the said *John Sleddall* would well and truly content and pay to the said *John Morton*, the said eighty Pounds, whenever he should be thereto required. Nevertheless the said *John Sleddall* not regarding his said several Promises and Undertakings, but wickedly and fraudulently intending craftily and subtilly to deceive and defraud him the said *John Morton* in that Behalf, hath not paid the said several Sums of Money, or any Part thereof, to the said *John Morton*, altho' the said *John Sleddall* was requested thereto by the said *John Morton* afterwards, (to wit) on the 31st of *August*, in the Year aforesaid, and often after that Time at *Westminster* aforesaid, but always hitherto hath, and still doth refuse so to do, to the Damage of the said *John Morton*, eighty Pounds; for which he brings this Suit, and so forth.

*A Declaration in Case for scandalous Words
spoken of a Tradesman.*

London. A. B. late of *Breadstreet*, in the Parish of *St. Mildred, Breadstreet, London*, Turner, was attach'd to answer to C. D. of a Plea of *Trespass upon the Case*, and so forth: And whereupon

whereupon the said *C.* by *George Woodcraft* his Com-
Attorney complains, that whereas he the said mon-
C. at *London*, (that is to say) at the Parish of *Pleas*.
St. Mary le Bow, in the Ward of *Cheap*, is a
good, true, faithful Subject of our Sovereign
Lord the King, and is, and always hitherto
hath been of a good Fame, Credit and Re-
putation, and is, and always hath been
reputed as such, as well with, and by his
Neighbours, as also with, and by many other
Persons of good Substance, and Subjects of our
said Sovereign Lord the King, *living remote*
from the said *C.* and whereas the said *C.* now
doth, and for several Years last past, hath used
and exercised the *Art* or *Mystery* of a *Mercer*
at *London* aforesaid, in the said Parish and
Ward, and ever since he hath so used and ex-
ercised such *Art* or *Mystery*, hath got his Live-
lihood in the Way of Merchandise, by buying
and selling such Wares, Merchandizes, and
Commodities, as have used to be bought and
sold by others exercising the same *Art* and
Mystery, without any *Deceit*, or having been
at any Time backward in paying his *Debts*,
and without the least Colour or Suspicion of
having been a *Bankrupt*, or liable to the sev-
eral Statutes made concerning *Bankrupts*, or
either of them; and by means of having so
behaved himself, had got, obtained and en-
joyed the good Esteem and Opinion, as well
of his Neighbours and *Creditors*, as of other
Persons his Majesty's Subjects, and Persons of
great Worth, Credit and Reputation. *Never-
theless* the said *A.* contriving unjustly to pre-
judice, detract, and injure the said *C.* in such
his good Name, Credit, Reputation and E-
steem, which he had so gained and obtained,
as well amongst his Neighbours and *Creditors*,
as with and among other great and reputable
Persons,

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Persons, living remote from the said C. on the 10th Day of May, in the Year of our Lord 1732, at London aforesaid, in the said Parish of St. Mary le Bow, in the Ward of Cheap, in the Presence of several of his said Majesty's Subjects; he the said A. maliciously, openly and publickly spoke, pronounced, and published these false, scandalous and malicious English Words following, to and of the said C. (that is to say) *thou*, (meaning the said C.) *art a Bankrupt, and a Drunkard, and of no Credit.* By means of speaking, pronouncing and publishing which false, scandalous and malicious Words, he the said C. is not only greatly hurt and prejudiced in his good Name, Credit and Reputation, but is also much damnified in transacting his lawful Affairs, in the said Way of buying and selling such Commodities, as belong to the said *Art and Mystery of a Mercer,* to the Damage of the said C. five hundred Pounds; and therefore he brings this Suit to recover Damages by reason of the Premisses.

Declarations in Debt.

A Declaration upon an Assignment of a Bail-Bond against the principal Defendant, at the Suit of the Assignee of the Sheriff, by force of the Statute in that Case made and provided.

Suffolk. Thomas Thorpe, late of Stowmarket, in the said County Woollendraper, was summon'd to answer to William Whitechurch, Gentleman, Assignee of Toby Blos, Esq; the late Sheriff of the County of Suffolk, according to the Form and Effect of the Statute in such Case made and provided, of a Plea, that he render to the said William forty Pounds of lawful Money

Money of Great-Britain, which he owes to, Com-
and unjustly detains from him; and thereupon
the said *William*, by *Thomas Evans* his At-
torney complains, that whereas on the 12th Day
of February, in the Year of our Lord 1728, the
said *William* sued, and prosecuted out of this
Court of our Sovereign Lord the King of
Common-Bench, his said Majesty's Writ, called
a Capias, against the said *Thomas*, at the Suit
of him the said *William*, returnable before his
said Majesty's Justices of the *Common-Bench*,
directed to the then Sheriff of the said County
of *Suffolk*: By which said Writ his said Maj-
esty commanded the Sheriff of *Suffolk*, that he
should take the said *Thomas*, if he was to be
found in his Bailiwick, and safely keep him,
so that he might have his Body before his said
Majesty's Justices at *Westminster*, in fifteen Days
from the Feast Day of *Easter*, to answer to the
said *William* of a Plea of *Trespass*; and also
to answer to the said *William*, according to
the Custom of his said Majesty's Court, in a
Plea of *Trespass upon the Case on Undertakings*,
to the Damage of the said *William* forty Pounds,
which said Writ afterward, and before the Re-
turn thereof, (that is to say) on the 10th Day
of March, in the said Year of our Lord 1728,
at *Stowmarket* in the said County, was deli-
vered to the said *Toby Blos*s, then Sheriff of the
said County of *Suffolk*, to be executed in due
Form of Law. By Vertue of which said Writ,
the said *Toby* afterwards, and before the Re-
turn of the said Writ, (that is to say) on the
said 10th Day of March, in the said Year of our
Lord, at *Stowmarket* aforesaid, took and ar-
rested the said *Thomas*; and during the Time
the said *Toby* so had the said *Thomas* in his Cu-
stody, by Vertue of the said Writ, he the said
Toby, then and there took Bail for the Ap-
pearance

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pearance of the said *Thomas*, at the Return of the said Writ, (that is to say) the said *Thomas* himself, and *Joseph Selgood* of *Stowmarket* aforesaid, *Chapman*, and *Timothy Trueman* of the same Place *Shoemaker*; and the said *Thomas* did on the same 10th Day of *March*, in the said Year of our Lord, by his *Writing Obligatory*, commonly call'd a *Bail-Bond*, permit himself to be bound to the said *Toby*, by the Name of *Toby Blos*, Sheriff of the County of *Suffolk*, in the said Sum of forty Pounds, to be paid to the said Sheriff or his *Assigns*, whenever after he the said *Thomas* should be there-to required, with a *Condition* thereunder written; that if the said *Thomas* should appear before his said Majesty's Justices at *Westminster*, in *fifteen Days from the Feast-Day of Easter* then next following, to answer to the said *William* of a *Plea of Trespass*, and also in a *Plea of Trespass on the Case* on *Undertakings*, to the *Damage* of the said *William* forty Pounds, that then the said *Writing Obligatory* should be *Void*, and of none *Effect*, or else should be and remain in full *Force*, *Power* and *Vertue*, as by the said *Writing Obligatory* and *Condition* thereunder written, *Relation* being thereunto had, may more fully and at large appear. And the said *William* in Fact declares, that the said *Thomas* did not appear before his said Majesty's Justices at *Westminster*, within the said *fifteen Days from the said Feast-Day of Easter*, mentioned in the said *Condition*, according to the *Form* and *Effect* of the said *Condition*, whereby the said *Bond* became forfeited to the said *Toby Blos*, as *Sheriff* of the said *County*. And the same being so forfeited, he the said *Toby* afterwards, (that is to say) on the 20th Day of *April*, in the said Year of our Lord, at *Stowmarket* aforesaid, (at the

the Request of the said *William*, Plaintiff in that Suit) by his Indorsement in Writing upon the said Bond, in the Presence of two credible Witnesses, (that is to say) *Burrell Keeble* and *William Chaplyn*, assign'd the said Bond to the said *William*, according to the Form of the Statute in such Case made and provided, of which said Indorsement the said *Thomas* afterwards, on the said 20th Day of *April* had Notice, (that is to say) at *Stowmarket*, in the said County. By reason of which Promises, and by Force of the Statute in such Case made and provided, an Action accrued to the said *William*, as Assignee to the said *Toby Blos*, Sheriff of the said County of *Suffolk*, to require, and have from the said *Thomas*, the said Sum of forty Pounds. Nevertheless the said *Thomas*, altho' often required, hath not paid the said Sum of forty Pounds, either to the said *Toby Blos*, or to the said *William*, but hitherto always hath, and still doth refuse to pay the said Sum to the said *William*, to the Damage of the said *William* ten Pounds; and therefore he brings this Suit to recover his said Debt, together with his Damages occasion'd by the Detaining the same; and the said *William* brings here into this Court the said Writing Obligatory, together with the said Indorsement made thereon as above, the respective Dates whereof are the Days and Years above for that Purpose respectively mentioned.

A Declaration in Debt upon a Bond.

Devonshire. *A. B.* late of *Southmalton*, in the County of *Devon*, *Mercer*, otherwise called *A. B. of Southmalton*, in the County of *Devon*, *Mercer*, was summon'd to answer to *C. D.* of a Plea, that he render to him twenty Pounds of

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lawful Money of Great-Britain, which he owes to, and unjustly detains from him, and so forth; And thereupon the said C. by *Thomas Lyte* his Attorney, complains, that whereas on the first Day of *March*, in the Year of our Lord 1722, at *Tiverton*, in the said County, the said A. by his *Writing Obligatory*, (commonly called a *Bond*) suffer'd himself to be bound to the said C. in the said Sum of twenty Pounds of lawful Money of Great-Britain, to be paid to the said C. whenever after the said A. should be thereto required. Nevertheless the said A. (altho' often required) hath not paid to the said C. the said Sum of twenty Pounds, or any Part thereof, but hitherto altogether hath, and still doth refuse to pay the same, to the Damage of the said C. ten Pounds; and thereupon he brings this Suit to recover his said Debt and Damages, occasion'd by Detaining the same: And he brings into this Court the said *Writing Obligatory*, which gives sufficient Testimony of the said Debt, the Date whereof is the Day and Year above-mentioned.

Note, there have been several Ways of declaring upon Bonds ; some using the Words that the Defendant *Obligavit se in penali summa* ; the Form in the King's-Bench generally made Use of is, that the Defendant (*Cognovit se teneri & firmiter Obligari*) but the usual Course in the Common Pleas hath been to make use of the Words *concessit se teneri*, which I have very good Authority from Littleton's *Dict.* who, in his giving an English Translation to this Word, says, *Concedo generale verbum est unde vim accipit a natura contractus cui adjungitur, & concedere pro permittere temporarium est. cedere perpetuum.*

*A Declaration in an Action of Debt, upon a Bond
brought by the surviving Oblige.*

Suffolk. A. B. late of Ipswich, in the County of Suffolk, Mariner, (otherwise called A. B. de Gippo in Comitatu Suffolciæ Nautam) was summon'd to answer to C. D. of a Plea, that he render to the said C. fifty Pounds, which he owes to, and unjustly detains from him. And whereupon the said C. by Robert Hamby his Attorney complains, that whereas the said A. on the first Day of July, in the Year of our Lord 1732, at Ipswich aforesaid, by his Writing Obligatory, (commonly called a Bond) permitted himself to be bound to the said C. and to one D. now deceased, (whom the said C. survived) in the said Sum of fifty Pounds, to be paid to the said C. and D. or to one of them, whenever after the said A. should be thereto required. Nevertheless the said A. altho' often required, hath not paid the said Sum of fifty Pounds to the said C. and D. or either of them, in the Life-time of the said D. or to the said C. after his Decease, but hath always refused Payment of the same to the said C. and D. in his Life-time, and now doth refuse Payment of the same to the said C. and D. in his Life-time, and now doth refuse Payment of the same to the said C. wherefore the said C. declares he is injured and endamaged to the Value of twenty Pounds; and thereupon he brings this Suit to recover his said Debt, together with his Damages, occasioned by detaining the same: And the said C. brings here into this Court the said Writing Obligatory, which testifies the said Debt; the Date of which is the same Day and Year above-mentioned.

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A Declaration upon a Bond, brought by Husband and Wife, as Executrix of the last Will and Testament of the Obligee, and the other Co-executrix against the Heir of the Obligor.

Devonshire. *A. B.* late of *Southmolton*, in the County of *Devon*, Gent. Son and Heir to *C. B.* otherwise called *C. B.* of *Southmolton*, in the County of *Devon*, Gent: was summon'd to answer to *D. E.* and *S.* his Wife, Executrix of the last Will and Testament of *F. G.* and to *H. F.* Co-executrix with the said *S.* of the said last Will and Testament of the said *T.* of a Plea, that he render to them one hundred Pounds, which he unjustly detains from them, and so forth: And whereupon the said *D. E.* and *S.* his Wife, and the said *S.* by *John Cock* their Attorney complain, that whereas the said *C.* (whose Heir the said *A.* now is) in his Life-time, (that is to say) on the first Day of *June*, in the Year of our Lord 1732, by a certain *Writing Obligatory*, (commonly call'd a Bond) suffer'd himself to be bound to the said *T.* in the said Sum of one hundred Pounds, to be paid to the said *T.* in his Life-time, whenever after he the said *C.* should be thereto required. And in order to make a due Payment of the said one hundred Pounds, the said *C.* by the same *Writing Obligatory*, bound himself and his Heirs. *Nevertheless* the said *C.* in his Life-time, or the said *A.* Son and Heir to the said *C.* after his Decease, altho' often required, have not, nor either of them hath paid the said Sum of one hundred Pounds, or any Part thereof, either to the said *F.* in his Life-time, or to the said *S.* and *H.* or either of them, after the Decease of the said *F.* and before the *Esposals* celebrated between them the said

D. and S. or to the said D. S. and H. after the Com-
said *Espousals* celebrated between the said D. mon
and S. but the said C. in his Life-time, and the Pleas.
said A. after his Decease, have hitherto refus-
ed to pay them, or either of them, the said
one hundred Pounds: Whereupon the said D.
S. and H. say, they are injured and endamaged
to the Value of twenty Pounds, and in Delay
of the Execution of the said last Will and Te-
stament of the said F. and thereupon they
bring this Suit, *and so forth.* And they the
said D. S. and H. bring into this Court as well
the said *Writing Obligatory*, which gives a suf-
ficient Testimony of the said Debt, the Date
whereof is the Day and Year above-mention-
ed; as also the *Letters Testamentary*, by which
it may sufficiently appear, that they the said
S. and H. are Executrixes of the said last Will
and Testament of the said T. and therefore
have the *Administration* of all and singular the
Goods and Chattels, Rights and Credits of
the said T. at the Time of his Death.

*A Declaration in an Action of Debt for Rent,
upon a Lease Parol-laid two several ways.*

Norfolk. A. B. late of Thetford, in the Coun-
ty of Norfolk, Yeoman, was summon'd to an-
swer to C. D. of a Plea, that he render to him
forty Pounds of lawful Money of Great-Britain,
which he owes to, and unjustly detains from
him, *and so forth.* And thereupon the said C.
by Robert Martin his Attorney complains,
that whereas the said C. on the 20th Day of
March, in the Year of our Lord 1731, at Thet-
ford aforesaid, had demised, and to Farm let
to the said A. one Messuage, one Garden, ten
Acres of Land, ten Acres of Meadow, and ten
Acres of Pasture, with the Appurtenances situ-
ate,

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ate, lying and being in the Parish of *Shipdham*, in the said County, for him the said *A.* and his Assigns, to have and occupy the said Tenements, with the Appurtenances, from the *Feast of the Annunciation of the Blessed Virgin Mary* then next following, unto the full End and Term of one whole Year, from thence next Ensuing, and fully to be compleat, and ended; and so from Year to Year, as long as both Parties should please, *yielding and paying* therefore yearly, and every Year so long as the said *A.* should have and occupy the said Tenements, with the Appurtenances, by Vertue of the said Demise, to the said *C.* the yearly Rent or Sum of forty Pounds of lawful Money of *Great-Britain*, at the four most usual Feasts or Days of Payment in the Year, (that is to say) on the Feasts of the *Annunciation of the Blessed Virgin Mary*, *St. John the Baptist*, *St. Michael the Archangel*, and the *Birth of our Lord Christ*, in every Year, by even and equal Portions; the first Payment thereof to begin, and to be made on the Feast of *St. John the Baptist* then next ensuing. By Vertue of which said Demise, the said *A.* entered into the said Tenements, with the Appurtenances to him demised, in the Manner as above set forth, and had held, and occupied the same, until the *Feast of the Annunciation of the Blessed Virgin Mary*, in the Year of our Lord 1732, and the Sum of twenty Pounds, (Part of the above-mentioned forty Pounds) for Half a Year's Rent, of the said annual Rent for the said Tenements, with the Appurtenances, was due at the said *Feast of the Annunciation of the Blessed Virgin Mary*, in the said Year of our Lord 1732, and in Arrear, and is yet unpaid to the said *C.* whereby an Action accrued to the said *C.* to require, and have of the said *A.* the

the said Sum of twenty Pounds, Part of the Com-
said forty Pounds above-mentioned. And mon
whereas also the said C. afterwards, (that is to Pleas.
say) on the 25th Day of March, in the Year
of our Lord 1731, at Thetford aforesaid, had
demised, and to farm let to the said A. one
other Messuage, one other Garden, ten other
Acres of Land, ten other Acres of Meadow, and
ten other Acres of Pasture, with the Appurte-
nances, situate, lying and being in the said Pa-
rish of Shipdham, in the said County of Nor-
folk, for him the said A. and his Assigns, to
have and occupy the same, unto the full End
and Term of one whole Year, from thence
next ensuing, and fully to be compleat and
ended ; and after the Expiration of the said
one whole Year, as long as both Parties should
please, yielding and paying therefore yearly,
and every Year so long as the said A. should
have and occupy the said Tenements, with the
Appurtenances, to the said C. at and according
to the Rate of forty Pounds a Year. By Ver-
tue of which said Demise last mention'd, the
said A. enter'd into the said last mention'd Te-
nements, with the Appurtenances, and held and
occupied the same, until the 25th Day of
March, in the Year of our Lord One Thou-
sand Seven Hundred and Thirty-Two, and
the Sum of twenty Pounds, (Residue of
the abovementioned forty Pounds) for Half a
Year's Rent for the said Tenements with the
Appurtenances last mentioned to have been
demised, was on the said Twenty-fifth Day
of March, in the said Year of our Lord One
Thousand Seven Hundred and Thirty-Two,
in Arrear, and yet is unpaid to the said C.
whereby an Action accrued to him the said C.
to require and have of the said A. the said last
mentioned twenty Pounds, Residue of the
said

Common
Pleas.

said forty Pounds. Nevertheless the said A. altho' often required, hath not rendred to the said C. the said several Sums of twenty Pounds and twenty Pounds, or any Part thereof; but hath altogether hitherto denied, and still doth deny the Payment of the same, to the Damage of the said C. ten Pounds; and therefore he brings this Suit to recover his said Debt, and Damages occasioned by detaining the same.

A Declaration upon a Recognizance, upon a Habeas Corpus, after Judgment in the Common-Pleas, affirmed in the King's-Bench by Writ of Error.

Trinity the eleventh of King GEORGE.

Middlesex. Robert White late of Hatton Garden, in the said County, Taylor, was summoned to answer to Thomas Wilkins, of a Plea that he render to him fifteen Shillings, which he owes to, and unjustly detains from him. And whereupon the said Thomas, by George Wheeler his Attorney, declares, That whereas the said Robert, otherwise called Robert White of Hatton Garden in the County of Middlesex, Taylor, on the twentieth Day of January, in the Year of our Lord One Thousand Seven Hundred and Twenty, came before Robert Tracy, Esq; One of his Majesty's Justices of the Common-Bench, at his Chambers situate in Serjeants-Inn in Fleetstreet, in his proper Person, and became Bail for John Bayley in the Sum of fifteen Pounds, that the said John Bayley should appear in his proper Person, in his said Majesty's Court of Common-Bench, (that is to say) at Westminster; or by his Attorney sufficient in Law, to an Original Writ, at the

Suit

Suit of the said *Thomas*, of a Plea of *Trespass* Com-
on the Case, to the Damage of the said *Thomas* fifteen Pounds, to be sued out and prosecuted by the said *Thomas* against the said *John*, in this same Court, before the *Morrow of the Ascension-Day* then next following, and to answer to the said *Thomas* in the same Plea: And also, that if it should happen, *Judgment* should be given in the same Court, for the said *Thomas*, against the said *John*, in the said Plea, that then the said *John* should make Satisfaction to the said *Thomas* for the Damages that should be recovered by, and awarded for the said *Thomas*, against the said *John* in the said Plea; or that he the said *John* would on that Occasion render his Body to his Majesty's Prison of the Fleet; which said Sum of fifteen Pounds, acknowledged to the said *Thomas* in the Manner as above, he the said *Robert* will'd and granted to be made of, and levied up² on the Lands and Chattels of the said *Robert*, to the Use and Behoof of the said *Thomas*, if it should happen that Default should be made by the said *John* in any of the Premisses, and he should be in a legal Manner convicted thereof; which said *Recognizance*, taken and acknowledged as above, before the said *Justice*, the said *Justice* afterwards (that is to say) on the *Twenty-third Day of January*, in the *sixth* Year of the Reign of his said present Majesty, delivered here into this Court with his own Hands, to be here in this Court enrolled of Record, and then and there the same was enrolled of Record in this Court, of the Term of *St. Hillary* in the said Year, before Sir *Peter King*, Knight, and his Companions, his said Majesty's *Justices* of this Court of Common-Bench at *Westminster*, as by the Record thereof now remaining here in this his said Majesty's

The Attorney's

Court, before his said Majesty's Justices at *Westminster*, more plainly may appear: And of which said *Plea of Trespass upon the Case*, a certain *Plaint* had been before that Time levied in his said Majesty's Court, before then being one of the *Sheriffs of London*; and the same *Plaint* was, by the Command of his said Majesty by his *Writ*, sent and transmitted hither at *Westminster*, as by the *Record* thereof now likewise remaining here in this his said Majesty's Court at *Westminster* may appear: And the said *Thomas* by the Name of *Thomas Wilkins*, afterwards and before the said *Morrow of the Ascension of our Lord* next following, the said *Twenty-third Day of January*, in the said Year of our Lord One Thousand Seven Hundred and Twenty, (that is to say) on the *tenth Day of February* in the said Year, sued out an *Original* against the said *John*, by the Name of *John Bayley*, late of *London*, Gentleman, of the said *Plea of Trespass upon the Case*, to the *Damage* of the said *Thomas*, *fifteen Pounds*, out of his Majesty's High Court of Chancery, the same then being at *Westminster*, directed to the *Sheriffs of London* then for the Time being returnable (and afterwards returned) at *Westminster*, before his said Majesty's *Justices* of this Court, in *fifteen Days from the Feast Day of Easter*, to which said *Original* the said *John* appeared by *Newton Stagg* his *Attorney*, according to the *Form* of the said *Recognizance*. And also, altho' the said *Thomas* afterwards, (that is to say) in *Easter Term*, in the said *sixth Year of the Reign* of his said present Majesty, in this his said Majesty's Court, before *Sir Peter King*, *Knight*, and his Companions, then his said Majesty's *Justices* of the said *Common-Bench*, recovered against the said *John* *Twenty-four Pounds*,

Pounds, of and upon the said *Plea*, which were awarded to the said *Thomas* here in this his said Majesty's Court of Common-Bench at *Westminster*, for his Damages which he sustained, as well by Reason of the said *Trespass upon the Case*, committed by the said *John* against the said *Thomas* as above-mentioned, as for his Expenses and Costs, laid out by him about his Suit in that Behalf, whereof the said *John* is convicted, as by the Record and Proceedings thereof, (which our said Sovereign Lord the King, by Virtue of his said Majesty's Writ for *correcting Errors*, sued out by the said *John* of and upon the Premisses, caused to be brought before himself, and which is now remaining in his said Majesty's Court before the King himself in all Things affirmed) may more fully and at large appear; which said *John Bayley* mentioned in the said *Recognizance*, and the said *John Bayley* mentioned in the said *Plaint, Original, and Judgment* thereupon had, as above, are one and the same and not different Persons; and the said *Thomas Wilkins*, mentioned in the said *Recognizance*, and the said *Thomas Wilkins* mentioned in the said *Plaint, Original and Judgment*, are one and the same and not different Persons. Nevertheless the said *John* hath not made Satisfaction to the said *Thomas* for the said *Damages*, nor rendered his Body to his Majesty's *Prison of the Fleet*, according to the Form of the said *Recognizance*, whereby an Action accrues to the said *Thomas* to require and have of the said *Robert* the said fifteen Pounds, by him acknowledged in the Manner as above, according to the Force, Form and Effect of the said *Recognizance*. Nevertheless the said *Robert*, altho' often required, hath not paid the said fifteen Pounds, or any Part therof, to the said *Thomas*,

The Attorney's

mas; but hitherto altogether hath, and still doth refuse to pay the same; whereby the said *Thomas* declares, that he is injured and endamaged to the Value of twenty Pounds, and therefore he brings this Suit for the Recovery of his said Debt and Damages, occasioned by detaining the same.

Before I proceed to treat of *Pleas*, I shall here just give a little Sketch of the Introductive Part of a *Plea*, and then insert a few Instances only of *Pleas in Abatement*; for were I to mention more, it would not answer the End for which this Treatise is designed, which is only to be a *small Pocket-Book*.

And first; it must be understood, that the Tenour of the Writ is to compel the Defendant's Appearance at the Return of the Process, and defend the Charge that the Plaintiff shall then lay against him; at which Time every Defendant, either in Person or by Attorney, did in ancient Times appear and plead what they had in their Defence *ore tenus*; that is, they related the Substance of their Defence at the Bar, if it was any special Matter, then their Counsel spoke at the Bar the Subject Matter of their Clients Defence; and the Plaintiff's Counsel did likewise *ore tenus* maintain their Client's Charge by way of *Replication*, and so on to the rest of the *Pleadings*; and the Entering Clerks were then the proper Persons, who enter'd what had been so pleaded; and it upon opening the Court, the Court saw plainly that the Plaintiff had no Title to maintain his Writ, then they *ex Officio* abated it; and my Lord Chief Justice *Vaughan* hath taken Notice of one or two Instances of that Nature. One was where a Man brought an *Action of Debt* against another, and counted that

that he sold certain Goods to his Testator for Com-
the Sum in Demand; Littleton caused the mon-
Attorney for the Defendant to be demanded, Pleas.
and so he was, and Littleton demanded of him,
if he would avoid the Suit? who answered,
Yes; then Littleton turned about to the Plain-
tiff's Attorney, and said, *The Court awards*
that you take nothing by the Writ, for know,
(says he) that a Man shall not have an Action a-
gainst Executors, where the Testator might have
waged his Law. And then says Brook, Note,
this is a Judgment *ex officio.*

There is no Occasion here to mention that
Brook, in abridging the Case, mistook the
Plaintiff for the Defendant, and the Word a-
vow for avoid; but I prefer you for that Pur-
pose to Vaughan '98.

Pleas to the Plaintiff's Declaration must be
either Dilatory or in Bar.

A Dilatory Plea is an Exception alledged
and made good in Law, and is as much as
Exceptio dilatoria with the Civilian's. Briton
C. 52. Bracton *Tractatus quintus, Title de Ex-*
ceptionibus.

Where the Defendant waves the Matter, or
says nothing, or nothing to the Purpose, there
the Judgment is peremptory for the Plaintiff;
and is entered either in this Manner, (that is
to say) that the Defendant cannot deny the
said Action of the Plaintiff, nor but that he
owes him so much Money.

Or otherwise it is thus, when the Defen-
dant's Attorney comes into Court to defend
the Force, Injury, and the Damages, &c. he is
supposed to be called upon by the Court for
his Client's Defence; and then if he says to the
Court, that he is not instructed by his Client
to make any Defence to the Plaintiff's Action,
whereby the Plaintiff remains undefended by

the Defendant; whereupon the Court awards the Plaintiff a Recovery of his Debt or Damages, as the Case is.

If the Defendant pleads, the true Order of pleading is to plead, 1. To the Jurisdiction of the Court. 2. In *Disability of the Person* of the Plaintiff. 3. To the Count. 4. To the Writ. And 5. To the Action.

In order to plead after the *Count*, the Defendant, to be assisted to plead the better, shall have *Oyer*, if he demands it, of every Thing which is not Parcel of the *Record*; and it hath been said, that in *Pleas* after the *Count*, even tho' in *Abatement*, he ought to make a full *Defence* of the *Wrong, Injury, and Damages*; but I make a Doubt whether that be *Law*; however, I am sure the safest Way is to plead always in *Abatement*, thus,

And the Defendant, by (such a one) his Attorney, comes and defends the Force and Injury, then go on with his *Plea*.

But in *Pleas* to a *Scire Facias*, there it is best to plead in this Manner.

And the said Defendant comes and prays Judgment of the said Writ, because a *Scire Facias* is no positive Charge of a Wrong or Injury, but a Method of bringing him into Court to shew Cause, why *Execution* should not be awarded for the Plaintiff.

But in every *Plea*, except to a *Scire Facias*, it is necessary, as my Lord *Coke* says in his *Institutes*, 127. that the Defendant should come and defend the Force and Injury laid to his Charge, to make him a Party to the Matter in *Variance*; that is to the Charge; that the Plaintiff has given Pledges that he will maintain against him, now in a *Scire Facias*, the Defendant is not in *Law* a Party to the Suit till he appears, nor is there any Charge of *Wrong or Injury* against him.

Bur-

But if it should be objected to me, that Common
where a *Scire Facias* is sued out upon a *Judgment, post Annum & Diem*, there the Defendant is a Party to the Suit, and there was a Wrong, and Force, and Injury charged upon him: My Answer is, It must be considered, that no *Scire Facias* lay in Personal Actions at Common Law, but was given by the Statute of W. 2. cap. 45. in lieu of a *New Original* upon the *Judgment*; and therefore the Parties to the Action and Judgment are at Common Law out of Court, and the Courts of Common Law would take no Notice of such Judgment before that Statute, till the Plaintiff had brought the Defendant into Court by a new Original, and compelled him to appear thereto; therefore as to any Suit, the Defendant by the *Scire Facias* is not a Party, but may plead by *venit & dicit* only.

I cannot here be so extensive upon this Head as I would, and therefore shall only lay down a few Observations that I have made, and which are most necessary to be under this Head.

These *Pleas in Abatement* are but little favoured because they are always *in dilatatione coloris Justitiae*, and therefore they are not to be received unless they come into Court within the first four Days within the Term, of which the Writ is returnable, and are never to be pleaded after a *General Imparlane*.

Unless the Substance of the Plea be, that the Land is *ancient Demesne*, which is to be received after an *Imparlane*. And the Reason thereof is, because if the Court gives Judgment against the Defendant, the Lord may reverse it by an Action of *Disceit*, and the Courts of Law will never give Judgments that are liable to be avoided, if they can help it.

Bar

March 83.

But if a Defendant enters a *special Impar-*
lance with the Prothonotary, and pays two
Shillings for the same, he may plead a *Plea*
in *Abatement* at any Time within Two Terms,
before the Rule, which the Plaintiff's Atto-
ney hath given for that Purpose, is expired.

But now *Imparlancess* by the foregoing Rule
are taken away, in all Cases within that Rule,
and dilatory *Pleas* are so much discouraged,
that in Personal Actions you cannot have
Oyer of an *Original* without moving the
Court for it, and shewing that you want it
upon some better Foundation than to delay
the Plaintiff; whereas heretofore the Defendant
was not obliged to plead till he had Oyer;
indeed in the *King's-Bench* they still retain the
old Method of making the Plaintiff's Atto-
ney give the Defendant Oyer before he is ob-
liged to plead; but it is otherwise in the
Common Pleas, and there thought much bet-
ter and more beneficial for the Suitor, that
he should have a speedy *Judgment*. But some
have said that *Imparlancess* and Oyer, are na-
tural Rights which every Subject of *England*
is born to, and therefore should not be taken
from them, nor should they be any ways ob-
structed in the Enjoyment of them; and to
corroborate their Assertion, they quote a Case
in 3 *Salk.* 186. *Ellis and Thomas*, where my
Lord Chief Justice Holt said, that the want of
an *Imparlane* where it appears, the Defendant
ought to have had it, is *Error*; and anoth-
er Case in *Cumberb.* 13. of *Cook and Williams*,
where it was likewise said by the then *Chief*
Justice, that the want of an *Imparlane*, if
pray'd, is *Error*; I submit these Considera-
tions to the Learned; it is sufficient for our
Purpose to take Notice where *Imparlancess*
are taken away.

By

By the Act of the 4th and 5th of Queen Anne, commonly called, *the Act for the Amendment of the Law*, these *Pleas* are not to be received, unless the Defendant makes an *Affidavit* of the *Truth* of his *Plea*, or shews some probable *Matter* to the *Court* to induce them to believe the *Fact* of such dilatory *Plea* is true.

Therefore *Matter of Record* in the same *Court* requires no *Affidavit*, and the *Reason* thereof arises from the foregoing *Words* of the *Act*, *viz.* (*or shews some probable Matter to the Court to induce them to believe, that the Fact of such dilatory Plea is true*:) And nothing can more induce the *Court* to believe a *Fact* to be true, than when it appears of *Record*.
Modern Cases 43.

Abatement by the *Death* of one of the *Plaintiffs* or *Defendants* is aided by the *Statute* of the 8th and 9th of *William and Mary*, and for an *Entry* for that *Purpose* see hereafter.

No *Advantage* can be taken to a bad *Declaration* upon a *Demurrer* to a dilatory *Plea*.
Carthew 170.

'Tis said that one may plead in *Abatement* of the *Declaration* where it is by *Original*; but if the *Action* be by *Bill*, you must plead in *Abatement* of the *Bill* only. 5 *Mod.* 144.

A *Writ of Error* depending is said to be no good *Plea* in *Abatement* to an *Action of Debt* upon a *Judgment*. But *contra* in 8 *Sho.* 146.

But 'tis said that a *Writ of Error* depending in the *Exchequer Chamber*, is a good *Plea* in *Abatement* to an *Action of Debt* upon a *Judgment* in the *King's-Bench*. 5 *Mod.* 68.

The *Bail* cannot plead *Misnomer* of the *Principal* in *Abatement*, *Mod. Cas.* 289; nor shall one *Partner* plead the *Misnomer* of his *Companion*. *Lut.* 36.

Common Pleas. In a *Replication* to a *Plea in Abatement* where Matter of Fact is pleaded, the Plaintiff must pray his Damages; because if upon an Issue a Verdict be found for him, he shall have final *Judgment*; but where a *Demurrer* is pleaded, the Plaintiff need only maintain his *Writ*, because if there is a *Demurrer*, the *Judgment* is only *quod respondeas ouster*. *Latch* 374. *Yelv.* 112.

After a *Plea in Chief* you shall never be at Liberty to plead in *Abatement*. *Latch* 153.

Duplicity in Abatement is ill, as well as in *Bar*; therefore two Outlawries pleaded make the *Plea* ill. 2 *Shower* 80.

Where the Defendant concludes his *Plea in Abatement*, and the Plaintiff demurs, as to a *Plea in Bar*, all is discontinued. *Cartheu* 138. 1 *Shoover* 155.

What might have been pleaded in *Abatement* can never be assigned for *Error*, *Cartheu* 124, nor pleaded to a *Scire Facias* upon the *Judgment*. 1 *Salk.* 2.

Care must be taken where there is a *Plea in Abatement*, and afterwards a *Respondeas ouster* awarded, that Notice be taken of it on the *Plea-Roll*, on which you enter your *Verdict*, or the Plaintiff can never have his *Judgment*. *Cartheu* 499, and because you shall not be at a loss for such an *Entry*, I have inserted one hereafter, *viz.*

The Entry of a Judgment on a Respondeas Ouster awarded.

At which Day as well the said (Plaintiff) as the said Defendant come in their proper Persons, and hereupon all and singular the Premises being viewed, and well understood by the Justices of this Court, It appeareth to the said

said Justices here, that the said Plea of the Com-
said (Defendant) is insufficient to quash the mon
said original Writ of the said Plaintiff. There- Pleat.
fore it is considered by this Court that the
said (Defendant) shall make a further Answer
to the said original Writ of the said (Plaintiff)
and thereupon the said (Defendant) comes
and defends the Force, Injury and Damages,
and whatever else he ought to defend; where
and when this Court will consider thereof;
and faith, (and then go on with your Plea,
and the rest of your Proceedings.)

Pleas in Abatement.

*A Plea of Privilege by an Attorney of the Com-
mon-Pleas, pleaded to an Action brought in
the King's Bench.*

And the said J. C. in his proper Person, comes
and defends the Force and Injury laid to his
Charge, and faith, That long before the Exhibiting the Bill of the said Dorothy, he was, * Note,
and continually afterwards hath been, and whereby
now is, an Attorney of his present Majesty's plead
Court of Common-Bench at Westminster, as by vilege in
his said Majesty's Writ of Privilege to this Plea another
annexed, * under the Seal of the said Court of Court
Common-Bench, may appear; and that he is than
prosecuting and defending divers Suits, Pleas where the
and Affairs, of divers liege People and Sub- Privilege
jects of his present Majesty in the same Court arises
of Common-Bench, as their Attorney. And the from, yoso
said J. faith, That he and all other Attorneys must
of the same Court of Common-Bench, by a laudable and ancient Custom, and according to Sub pede
the Laws of this Kingdom, and the Liberties Sigilli,
and Privileges of the said Court of Common- as in this
Bench, Precedent

Com-
mon-
Pleas.

Bench, Time out of Mind used and approved of, ought not to be drawn or compelled to answer before any Justices or other Officers of our said Sovereign Lord the King, or other Judges whatsoever in any Court, except before the *Justices* of the said Court of *Common-Bench* of our said Sovereign Lord the King, at *Westminster*, on any Pleas or Complaints, (*Pleas relating to Freeholds, Felonies and Appeals only excepted*) and this he is ready to verify. Wherefore he prays *Judgment*, whether he ought to be compelled to answer the said *Dorothy* in the said Plea, and so forth.

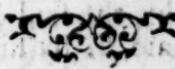
A Plea that the Plaintiff is outlawed.

And the said *A.* by *John Cock* his Attorney, comes and defends the Force and Injury laid to his Charge, and faith, that he ought not to be compelled to make Answer to the said *Declaration* of the said *C.* because he the said *A.* saith, that *heretofore* (that is to say) in *Michaelmas Term*, in the Sixth Year of the Reign of his present Majesty, one *G. H.* impleaded the said *C.* by the Name of *C. D.* late of *Bread-street, London*, in his Majesty's Court of *Common-Pleas*, in a *Plea of Debt*. And he the said *C.* forasmuch as he did not come into the said Court of *Common-Pleas*, to answer to the said *G. H.* in the said *Plea*, according to the Laws and Customs of this Kingdom, was put in *Exigent to be outlawed in London*: And on that Occasion afterwards, (that is to say) on *Monday* next after the *Feast of St. Mark the Evangelist*, in the said sixth Year of the Reign of his present Majesty, was duly outlawed, as by the Record and Proceedings thereof now remaining in this his said present Majesty's Court of *Common-Pleas* at *Westminster*, may plainly

plainly appear; which said *Outlawry*, so as Com-aforesaid, had and pronounced against the said mon C. is, and yet remains in its full Force, unre-
versed and disannulled; and the said C. D. mentioned in the said *Outlawry*, and the said C. D. mentioned in the said *Original Writ*, are one and the same and not different Persons; and this he is ready to verify. Wherefore he prays *Judgment* whether he ought to make Answer to the said *Declaration* of the said C. he the said C. being outlawed, as above, until the said *Outlawry* be reversed, and so forth.

A Plea of Misprision of Commonwealth.

And the said *Alexander*, by *Robert Martin* his Attorney, comes and defends the Force and Injury above laid to his Charge, and prays *Judgment* of the said *Writ*, because he saith, that he now doth, and at the Day of suing out the said *Original Writ* of the said C. did, and for many Years before had, and ever since hath inhabited and dwelt in the Parish of *St. Dun-bans in the West*, in the Ward of *Farringdon without, London*; *Without that*, that the said A. at the Day of suing out the said *Original Writ* of the said C. did, or at any Time before had, or at any Time since hath inhabited and dwelt in the said Parish of *St. Clements Lanes*, in the said County of *Middlesex*, as the said C. doth above suppose by his said *Writ*, and this he is ready to verify. Wherefore he prays *Judgment* of the said *Writ*, and that the same may be quashed, and so forth.

The

Com-
mon
Pleas.

The Statute of Additions pleaded.

And the said *J.* by *W. S.* his Attorney, comes and defends the Force and Injury laid to his Charge, and prays Judgment of the said *Writ*; because he saith, that by Force of the Statute of Additions in Writs in which Process of Outlawry lieth, the Addition of the Vill, Hamlet, Place and County of Commonalty of the said *J.* ought to have been contained in the said Original Writ of the said *J.* and this he is ready to verify. Wherefore, inasmuch as such Addition is not contained in the said *Writ*, (wherein Process of Outlawry) lieth, the said *J.* prays Judgment of the said *Writ*, and that the same may be quashed, and so forth.

A Plea of Misnomer of the Defendant in his Surname.

Robert Sims, who was arrested by the Name of *Thomas Symonds*, by *J. L.* his Attorney, comes and defends the Force and Injury above laid to his Charge, and prays Judgment of the said *Writ*, because he saith, that he is the same Person whom the said *J.* hath impleaded by the Name of *Robert Symonds*; and that he now is, and at the Time of suing out the said Original Writ of the said *J.* was, and ever since his Nativity hath been called and known by the Name of *Robert Sims*, that is to say at *London* aforesaid, in the said Parish and Ward; *Without that*, That he is, or at the Time of suing out the said Original Writ of the said *J.* was, or at any Time before or since, hath been called or known by the said Name of *Robert Symonds*, as the said *J.* by his said *Writ* doth above suppose; and this he is ready to verify: Where-

Wherefore he prays Judgment of the said *Writ*, Command that the same may be quashed, and so forth.

For Misnomer in his Name of Baptism.

And *William Robins*, who was by the Sheriff of Norfolk taken and arrested by the Name of *Robert Robins*, by *Robert Martin* his Attorney, comes and defends the Force and Injury above laid to his Charge ; and saith, that he ought not to be compelled to make Answer to the said *Writ*, because he saith, that he is not, nor can be supposed, to be the same Person against whom the said *A.* hath brought his said *Writ* ; because he saith, that he the said *William* was baptized by the Name of *William* ; and at the Time of the said *A.*'s suing out the said *Original Writ* was, and always before and since hath been called and known by the said Name of *William Robins*, (that is to say) at *Ibertford* aforesaid, in the said County of Norfolk ; *Without that*, That he at the Time of the said *A.*'s suing out his said *Original Writ*, or at any Time before or since hath been, or now is called by the Name of *Robert Robins*, as by the said *Writ* above is supposed ; and this he is ready to verify. Wherefore he prays Judgment of the said *Writ*, and that the same may be quashed, and so forth.

That the Testator was alive at the Time of suing out the Plaintiff's Original.

And the said *Grace* by *J. S.* her Attorney, *Original* comes and defends the Force and Injury above laid to her Charge, and craves *Oyer* of the said *6th of Nov.* *Original Writ* of the said *S.* and it is read to *member*. her in these Words : *George the Second, (here recite*

Common Pleas. recite the Writ, and then say) which being read and heard, she the said Grace prays Judgment of the said Writ, because she saith, that the said George her late Husband, after the said sixth Day of November, in the said Year, (that is to say) on the thirtieth Day of the same Month of November, in the same Year, was alive and in good Health, at (the Place in the Declaration,) Without That, that the said George was dead at the said Time of the suing out the said Original Writ of the said S. and this she is ready to verify: Wherefore she prays Judgment of the said Writ, and that the same may be quashed, and so forth.

Infancy in the Plaintiff.

And the said B. by P. J. his Attorney, comes and defends the Force and Injury above laid to his Charge, and prays Judgment of the said Writ, because he saith, that the said R. now is within the Age of Twenty-one Years, (that is to say) of the Age of eighteen Years, and no more; and that the said R. hath declared here in this Court, by T. H. his Attorney, in the Plea-aforesaid; whereas by the Law of the Land the said R. ought to have declared by his Guardian, or by his next Friend, (to be specially admitted by this Court for that Purpose;) and this he is ready to verify. Wherefore inasmuch as the said R. is within the said Age of twenty-one Years, and hath declared in this Court by his Attorney, in the said Action, he the said B. prays Judgment of the said Writ, and that the same may be quashed, and so forth.

General Issues.

And the said *John* by *William Stibbs* his Attorney, comes and defends the Force and Injury, and Damages, and whatever else he ought to defend, when and where this Court will take the same into Consideration, and faith, that he did not undertake in the Manner and Form as the said *Thomas* above complains against him ; and of this he puts himself upon the Country, and the said *Thomas* does likewise the same. Therefore the Sheriff is commanded, that he cause twelve free and lawful Men of the Body of his County to come here on the *Ottave of the Purification of the Blessed Virgin Mary*, each of which to have ten Pounds a Year, in Lands, Tenements, or Rents, by whom the Truth of the Matter will be the better known ; and who are in no wise related to either of the said Parties, to recognize whether the said *John* did undertake in the Manner and Form as the said *Thomas* above complains against him ; because as well the said *John* as the said *Thomas* have submitted themselves to the *Jury*.

I submit it whether it would not be better to plead in this Manner,

Go on as before, to the Words *when and where this Court will take the same into Consideration*, and then to say, And the said *John* says, that he made no such Promise, (or Promises, as the Declaration is) in the manner and Form, as the said *Thomas* above complains against him ; and then go on as before.

And the said *John* says, that he is in no wise Not Guilty of the Premisses above laid to his ty.

N Charge,

Common
Pleas.

That he
owes no-
thing.

That the
Bond is
not his
Deed.

Charge, as the said *Thomas* above complains against him ; and of this he puts himself upon his Country, and the said *Thomas* does likewise the same, &c.

And the said *John* saith, that he does not owe to the said *Thomas* the said twenty Pounds, or any Sum of Money whatsoever, in the Manner and Form as the said *Thomas* above complains against him ; and of this, &c.

And the said *John* saith, that he ought not be charg'd with the Payment of the said *Debt*, by Virtue of the said *Bond*, because he says, that the said *Bond* is not his *Deed* ; and of this, &c.

And if to a *Bill* *Penal*, then you say,

And saith, that he ought not to be charged with the Payment of the said *Debt*, by Virtue of the said *Bill*, because he saith, that the said *Bill* is not his *Deed* ; and of this, &c.

And so if the Declaration be in an *Action* of *Debt* for *Rent* upon an *Indenture* you say.

And the said *John* saith, that he ought not to be charged with the Payment of the said *Debt*, by Virtue of the said *Indenture*, because he saith, that the said *Indenture* is not his *Deed* ; and of this, &c.

General Bars.

Non Af-
sumpsit
infra sex
Agnos.

AND the said *John* (as before) saith, that the said *Thomas* ought not to have, or maintain his said *Action* against him thereon, because he saith, that he did not undertake, (or that he made no such *Promise* or *Promises*

in the Declaration mention'd) at any Time Com-
within six Years, before the Day of the said mon-
Thomas's suing out his said Original Writ in Pleas.
such Manner and Form, as the said Thomas
above complains, against him; and this he is
ready to verify; wherefore he prays Judg-
ment, whether the said Thomas ought to have,
or maintain his said Action against him to re-
cover Damages, by reason of the Premisses.

That he
made no
such Pro-
mise
within
six Years.

And the said Thomas saith, that he, (not-
withstanding any thing above alledged by the
said John in his Plea) ought not to be pre-
cluded from having his said Action against the
said John, because the said Thomas saith, that
the said John, within six Years before the Day
of the Issuing out of the said Original Writ of
the said Thomas, (that is to say) on the 20th
Day of June, in the fifth Year of the Reign of
our Sovereign Lord George the Second, King
of Great-Britain, and so forth, undertook, (or
made such Promise or Promises, as in the said
Declaration is, or are mention'd) in such Man-
ner and Form, as the said Thomas above com-
plains against him; and this he prays may be
enquired of by the Country; and the said John
prays likewise the same.

*Payment pleaded to an Action on
several Promises.*

And the said John, by J. L. his Attorney,
comes and defends the Force, Injury and Da-
mages, and whatever else he ought to defend,
when and where the Court will consider there-
of; and saith, that the said William ought not
to have or maintain his said Action against
him, because he saith, that after the making
the several Promises and Undertakings men-
tion'd

The Attorney's

tion'd in the said *Declaration*, and before the suing out the said *Original Writ* of the said *William*, (that is to say) on the 10th Day of *July*, in the sixth Year of the Reign of his present Majesty at *Thetford* aforesaid, in the said County of *Norfolk*, he the said *John* paid to the said *William* the Sum of twenty Pounds, which he then and there received in full Satisfaction of all Sums of Money at that Time due from the said *John* to the said *William*; and this he is ready to verify; wherefore he prays *Judgment*, whether the said *William* ought to have, or maintain his said *Action* thereof against him, *and so forth*.

Replication thereto.

And the said *William* saith, that he ought not to be precluded from having his said *Action* against him, because he saith, that the said *John* hath not paid to the said *Thomas* the said Sum of twenty Pounds in full Satisfaction and Discharge of all the several Sums of Money due from the said *John* to the said *William*, in such Manner and Form, as the said *John* hath above alledged in his *Plea*. And this he prays may be enquired of by the Country; and the said *John* prays likewise the same.

If there are more Promises than one, then, to such of the Promises as you think the Plaintiff can't recover upon, you must plead it thus; as suppose the Plaintiff declares of an *Insimul Computasset*, (that is to say) that the Plaintiff and Defendant accounted, and that there was so much in Arrear, besides an *Indebitatus Assumpsit*, for Goods sold and deliver'd, when there actually had been only Goods sold and deliver'd; but no Account stated; the way to plead it is thus. And

And the said *John*, as to the last mention'd Promise in the said Declaration, and also as to five Pounds Part of the said fifteen Pounds contained in the said first Promise mention'd in the said Declaration, saith, that he did not undertake, (*or he made no such Promise and Undertaking*) as the said *Thomas* hath declared against him; and of this he puts himself upon the Country; and the said *Thomas* does likewise the same. And as to ten Pounds, Residue of the said fifteen Pounds mention'd in the other Promise and Undertaking in the said Declaration, the said *John* saith, that the said *Thomas* ought not to have, or maintain his said *Action* thereof against him, because he saith, that after making the said last mention'd Promise and Undertaking contained in the said Declaration; and before the Issuing out of the said Original Writ of the said *Thomas*, (that is to say) on the tenth Day of September, in the Year of our Lord 1732, at the said Parish of *Clement's Danes*, he the said *John* paid to the said *Thomas* the said Sum of ten Pounds; and this he is ready to verify; wherefore he prays *Judgment*, whether the said *Thomas* ought to have, or maintain his said *Action* thereof against him, *and so forth.*

Replication.

And the said *Thomas*, as to the said Sum of ten Pounds, Part of the said fifteen Pounds, mention'd in the said last Promise and Undertaking, saith, that notwithstanding any thing alledged by the said *John* in his *Plea* above-mention'd, he the said *Thomas* ought not to be precluded from having his said *Action* against him, because he saith, that the said *John* hath not

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not paid to the said *Thomas* the said Sum of ten Pounds, in such Manner and Form as the said *John* hath above in his Plea alledged; and this he prayes may be enquired of by the Country; and the said *John* prayes likewise the same.

If the Declaration contains five Promises, the one an *Indebitatus Assumpſit* for twenty Pounds for Work and Labour, another a *Quantum Meruit* for the same, an *Indebitatus Assumpſit* for Goods sold and deliver'd, and a *Quantum Valebant* for the same, and an *Instimul Compataſſet*.

And if the Defendant's Attorney is well satisfied from his Client, that he never bought any Goods of him, that there never was such an Account stated between them, and that his Work and Labour comes but to ten Pounds, his best way of pleading it, is thus.

And the said *John*, as to all the several Sums of Money contained in the second, third, fourth and fifth Promises mention'd in the said Declaration; and also as to ten Pounds Part of the said twenty Pounds mention'd in the said first Promise in the said Declaration; the said *John* saith, that he did not undertake, in such Manner and Form, as the said *Thomas* above complains against him; and of this he puts himself upon the Country; and the said *John* doth likewise the same: And as to the said ten Pounds, Residue of the said twenty Pounds, mention'd in the said first Promise in the said Declaration, the said *John* saith, that the said *Thomas* ought not to have or maintain his said *Action* thereof against him, because he saith, that after the making of the said Promise and Undertaking, and before the Day of issuing

ing out the Original Writ of the said *Thomas*, Com-
(that is to say) *such a Day, Year and Place*, he mon-
the said *John* was ready, and tender'd Pay-
ment of the said Sum of ten Pounds to the
said *Thomas*, which said Sum of ten Pounds so
tender'd as aforesaid to the said *Thomas*, he
the said *Thomas* then and there did, and al-
ways afterwards hath refused to accept ; and
that Sum he the said *John* is now ready to
pay to the said *Thomas*, if the said *Thomas* is
willing to accept the same. And for that
Purpose, the said *John* brings the said Sum of
ten Pounds into this Court to be paid to the
said *Thomas*, if the said *Thomas* is willing to
accept of the same ; and this he is ready to
verify ; wherefore he prays Judgment, whe-
ther the said *Thomas* ought to have or main-
tain his said *Action* thereof against him, *and so*
forth.

Replication thereto.

And the said *Thomas*, as to the said Sum of
ten Pounds, Residue of the said Sum of fifteen
Pounds, mentioned in the said first Promise
in the said Declaration, faith, that notwith-
standing any thing above alledged by the said
John in his said Plea, he the said *Thomas*
ought not to be precluded from having his
said *Action* thereof against him the said *John*,
because he the said *Thomas* faith, that the said
John did not tender to the said *Thomas* the said
Sum of ten Pounds, in such Manner and Form
as the said *John* hath above alledged in his
Plea ; and this he prays may be enquired of
by the Country, and the said *John* prays like-
wise the same.

A Plea of Payment to an Action for Money due
on a Bond.

And the said *John* comes and defends the Force, Injury and Damages, and whatever else he ought to defend, when and where the Court will consider thereof, and craves Oyer of the said *Writing Obligatory*, (or of the said *Bond*, according as the Plaintiff calls it in his Declaration) and it is read to him, and so forth. He likewise craves Oyer of the Condition of the said *Bond* thereunder written; and it is read to him in these Words, (here recite the Condition) which being read and heard, the said *John* says, that the said *Thomas* ought not to have his said Action against the said *John*, because he saith, that after the making of the said *Bond*, and after the said 25th Day of *July*, mention'd in the said Condition, and before the issuing out of the Original Writ of the said *Thomas*, (that is to say) on the 20th Day of *September*, in the Year of our Lord One Thousand Seven Hundred and Thirty-Two, he the said *John* paid to the said *Thomas*, the said Sum of fifty Pounds mention'd in the said Condition, together with all Interest due thereon, according to the Form of the Statute in that Case made and provided; and this he is ready to verify; wherefore he prays Judgment, whether the said *Thomas* ought to have, or maintain his said Action against him, and so forth.

This Plea of Payment was given by the Act of 4 & 5 of Queen *Anne*, cap. 16. for the Amendment of the Law, as mention'd among the Proceedings of the King's-Bench.

The

*The Form of making up Records, and of the
Proceedings to Trial.*

Com-
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Pleas.

Pleas at Westminster, before Sir Robert Eyre, Knt. and his Companions Justices of the Bench of our Sovereign Lord the King of Hillary Term, in the sixth Year of the Reign of our said Sovereign Lord George the Second, King of Great-Britain, France and Ireland, Defender of the Faith, and so forth.

Placita,

Roll 67.

Norfolk. John Gooch, late of Thetford, in the said County of Norfolk, Gent. was attach'd to answer to Thomas Hunt of a Plea of Trespass, (or Trespass on the Case;) and whereupon the said Thomas complains, that whereas, &c. so go on to the End of the Declaration, and then begin the Plea thus:

*And the said Thomas, by Robert Martin his Plea-
Attorney, comes and defends the Force, In-
jury and Damages; and whatever else he ought
to defend, when and where the Court will
consider thereof; and faith, that he did not
undertake in such Manner and Form as the
said Thomas above complains against him; and
of this he puts himself upon his Country; and
the said Thomas doth likewise the same; there-
fore the Sheriff is commanded, that he cause
twelve free and lawful Men of the Body of
his County, every one of which to have ten
Pounds a Year at least, of Lands, Tenements
or Rents, by whom the Truth of the Matter
may be the better known, to come here on the
Oblate of Saint Hillary, and who are not relat-
ed, either to the said Thomas, or the said John,
to recognize and make a Jury of the Country
between the said Parties of the Plea aforesaid.*

N. 5.

67

Common Pleas, because as well the said John, as the said Thomas, between whom the Matter is in Dispute, have submitted themselves to the Jury.

If the Cause be not try'd of the same Term mention'd in the Placita above, then you must insert a new Placita between this and the following Jurata.

The Form of a Jurata.

Norfolk. A Jury is here respite till fifteen Days from the Feast-Day of Easter, between Thomas Hunt the Plaintiff, and the said John Gooch, late of Thetford, in the said County, Gent. of a Plea of Trespass upon the Case, unless his Majesty's Justices appointed to hold the Assizes in the said County, should come before the 20th Day of March, at Thetford in the said County thro' Default of the Jurors; and because none of the Jurors may come, therefore let the Sheriff have the Bodies, and so forth. And be it known, that the Justices have delivered a Writ thereof here in this Court, this same Term to the Under-Sheriff of the same County, to be executed in due Form of Law.

If it be thought proper to carry that Sentence to its full Length in the Jurata above, which is understood by the Words, and so forth, then it is thus:

Therefore let the Sheriff have the Bodies of A. B. C. D. E. F. G. H. J. K. L. M. and so on to the rest of the Jurors return'd in the Panel to the Venire Facias, before our Justices at Westminster, in fifteen Days from the Feast-Day of Easter, or before our Justices appointed to hold

hold the Assizes in your County, if they should come before, on Monday the 26th Day of March next following, at Thetford in your County; Pleas, the above-mentioned Jurors having been summon'd in our Court, before our Justices at Westminster, to make a Jury between the said Parties, of a Plea, or in an Action of Trespass, on the Case.

Before the late Act of Parliament of the Fifth of his present Majesty, the Names of the Jury were always expressed in the *Habeas Corpora*, and that was the Reason of this Entry; but now the Names of the Jurors are not mentioned in the Body of the *Habeas Corpora*, but the Tenor of the Writ now is, that the Sheriff shall have the Bodies of the several Persons mention'd in the Pannet annex'd to that Writ, as may be seen hereafter in the Form of a Writ of *Habeas Corpora*; and therefore I submit it, whether the Form of the above Entry may not now be shorten'd in this Manner.

Therefore let the Sheriff have the Bodies of the several Persons by him return'd here to his Majesty's Justices, on his Majesty's Writ of *Venire Facias* to him directed, to summon a Jury between the said Parties of the Plea aforesaid, or I would rather say in the said Actions.

If your Jurors be in London, then it is thus:

London. A Jury is here respite between Thomas Hunt, Plaintiff, and John Gorke, late of London, Gent. of a Plea of Trespass upon the Case, until (the very next Day after the Sittings,) if in Term; but if not in Term, then to the first Term of the next Term; as in

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fifteen Days from the Day of the Feast of Easter, unless Sir Robert Eyre, Knt. his Majesty's Chief Justice of the Common-Bench, appointed to try and determine Causes, by Force of the Statute in such Case made and provided, should come before, on Wednesday the 14th Day of February, at Guildhall, London, through the Default of the Jurors: And as to the rest, as in the former.

If in Middlesex, you say, unless Sir Robert Eyre, Knt. his Majesty's Chief Justice of the Common-Bench, appointed to hear and determine the Matters in Variance, by Force of the Statute in such Case made and provided, should come there before on Tuesday the 13th Day of February, at Westminster aforesaid, in the great Hall of Pleas, commonly called Westminster-Hall, by the Default of the Jurors; and as to the rest, as in the former.

The Form of the Warrants of Attorneys.

Norfolk. Thomas Hunt appoints in his Stead, Robert Martin his Attorney, against John Gooch, late of Thetford, in the said County Gent. in an Action of Trespass upon the Case.

Norfolk. John Gooch, late of Thetford, in the said County, Gent. appoints in his Stead Henry Cockedge his Attorney, in the said Action.

The Form of a Venire.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, and so forth. To the Sheriff of Norfolk Greeting. We command you, that you cause Twelve free and lawful Men of the Body of your County, (every of which to have ten Pounds a Year at least in Lands, Tenements,

nements or Rents, by whom the Truth of the Com-
Matter will be the better known) to come be-
fore our Justices at *Westminster*, in fifteen Days
from the Feast-Day of *Easter*, and who are in no
ways related, either to the said *Thomas Hunt*
the Plaintiff, or to the said *John Gooch* late of
Thetford in your County, Gent. to make a
Jury of the Country, between the said Parties
of a Plea of *Trespass upon the Case*, because,
as well the said *Thomas*, as the said *John*, be-
tween whom the Matter is in Dispute, have
submitted themselves to the Jury; and have
you there the Names of the *Jurors*, and this
Writ. Witness Sir *Robert Eyre*, Knt. at *West-
minster*, the 12th Day of *February*, in the sixth
Year of our Reign.

Borret.

The Form of the Habeas Corpora.

George the Second, by the Grace of God,
King of Great-Britain, France and Ireland, De-
fender of the Faith, and so forth, to the She-
riff of Norfolk, Greeting. We command you,
that you have the Bodies of the several Per-
sons mentioned in the Panel annex'd to this
Writ, before our Justices at *Westminster*, in fif-
teen Days from the Feast-Day of *Easter*; or be-
fore our Justices appointed to hold the Assizes
in your County, by Force of the Statute in
such Case made and provided, if they should
come before, on Monday the 20th Day of *March*,
at *Thetford* in your County, thro' the Default
of the *Jurors*; the said *Jurors* having been
summoned in our Court, before our Justices
at *Westminster*, to make a Jury between *Thomas*
Hunt Plaintiff, and *John Gooch* late of *Thet-
ford* in your County, Gentleman, of a Plea of
Trespass upon the Case; and have you there
this

The Attorney's

Common Pleas. this Writ. Witness Sir Robert Eyre, Knight, at Westminster, the twelfth Day of February, in the sixth Year of our Reign.

If your *Habeas Corpora* be in London, you only vary it in this Manner; instead of (before our Justices appointed to take the Assizes in your County, &c.) you say,

Or before Sir Robert Eyre, Knight, our Chief Justice, appointed to hear, try and determine Matters in Variance depending in our said Court of Common-Bench, by Force of the Statute in such Case made and provided, shall come before on Thursday the 6th Day of February, (which must be the Day of the Sittings when you intend to try the Cause) at Guildhall, London, thro' the Default of the Jurors. And then you go on as before, Being Jurors summoned, &c.

Note, this Rule must be observed in Causes to be tried in London and Middlesex.

Your *Venire* must bear Teste on the first Day of the Term, on which *Issue* is joined; and returnable at a Return-Day before you try the Cause: And the Teste of your *Habeas Corpora* should be on the Return-Day of your *Venire*, and the Return thereof should be on a Return-Day after your Cause is to be tried; as for Instance, Suppose your Cause is to be tried at the third Sitting in *Hilary Term*, which we will suppose to be on the fourth of *February*; your *Venire* must bear Teste the 23d Day of *January*, and be returnable in fifteen Days from the Day of *St. Hilary*; and your *Habeas Corpora* will bear Teste on the 21st Day of *January*, and must be returnable on the Octave of the Purification of the Blessed Virgin Mary.

And

And tho' originally at Common Law there Com-
was to be fifteen Days between the Teste and mon
the Return of every Writ, yet by the Statute Pleas.
of the 13th of K. Charles the Second, cap. 2.
sct. 6, reciting, that many Suits commenced
by Original Writs had been protracted, and
long delayed from Judgment and Execution,
by Reason of the Necessity of having fifteen
Days at least between the Days of the Teste
and the Days of Returns of Writs then used
in Personal Actions, and also in Actions of
Ejectment for Lands and Tenements, for
Remedy thereof, and for the more easy ex-
pediting Trials, and for the more speedy exe-
cuting of Judgments, for the Time then to
come, It was enacted, ' That in all Actions
of Debt, and all other Personal Actions
whatsoever, and also in all Actions of Eject-
ment for Lands and Tenements then de-
pending; or which at any Time then after
should depend by Original Writ, in either of
of his Majesty's Courts aforesaid, after any
Issue therein joined to be tried by a Jury,
and also any Judgment had or obtained, or
to be had or obtained in either of the Courts
aforesaid, in any such Action as aforesaid,
there should not need to be fifteen Days be-
tween the Teste-Day and the Day of the
Return of any Writ or Writs of *Ventre Fa-
cias, Habeas Corpora Juratorum, or Distringas
Juratores, Writs of Fieri Facias, or Writs of
Capias ad Satisfactendum*; and that the Want
of fifteen Days between the Teste-Day and
the Day of the Return of any such Writ,
should not be assigned for, or taken or ad-
judged to be Error; any Law, Custom, Sta-
tute or Usage to the contrary thereof in any
wise neuer hindring.

Com-
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Pleas.

And it may not be amiss to explain what is meant in the Award of the several Writs of *Habeas Corpora* and *Distringas*, by the Sheriffs being commanded to have the Bodies of the Jurors before the Judges of the Court from whence the respective Process Issues, on the next Return-Day after the Cause is tried, unless (*if in London or Middlesex, the Chief Justice of the respective Courts, or if at the Assizes*) The Justices appointed to hold the Assizes at such a Place, in such a County, should come before, that is, before the Return of the *Habeas Corpora* or *Distringas*, there at the *Assizes* thro' the Default of the Jurors.

2 Inst.
422.

In order to understand which it is necessary to shew, that before the Statute of *Magna Charta*, Assizes were only to be taken in the Court of Common-Pleas, or before the Justices in *Eyre*, which occasioned great Delay to the Plaintiffs. And by that Statute v. *Magna Charta*, cap. 30. it was provided, that the Assizes should be taken in the proper County, once every Year. So that my Lord Coke says in his 4 Inst. 158. that no Assizes by this Statute could be returnable in the King's-Bench or Common-Pleas, unless the Disseisin had been made in the County where the Benches sat; and if both Benches sat in the same County, then the Plaintiff was at Liberty to make his Writ returnable either in the King's-Bench or Common-Pleas; and he says further, that in that Case it appears, that the Justices of both Benches had original Jurisdiction ordinarily, without any Patent.

But Trials by *Nisi Prius* were first instituted by the Statute of Westminster 2. and the Authority for that Purpose is annexed to Justices of *Assize*, by Force of a Judicial Writ. And by the last-mentioned Statute that Remedy pro-
vided

vided by *Magna Charta* was thought too Short; Com-
and therefore by the Statute of *Westm. 2.* they mon-
were appointed to be taken three Times a Pleas.
Year. The first was between the fifteenth
Day of the Feast of St. John the Baptist and
the *Gule of August*, by which is meant the
Feast of St. Peter *ad Vincula*, which is the 1st
of *August*, and the second was between the
Feast of the *Exaltation of the Holy Cross* and the
Utas, (or the Octave) of St. Michael; and the
third was between the Feast of the *Epiphany*
and the Feast of the *Purification of the Blessed*
Virgin Mary.

It would be too tedious here to mention
the several Remedies provided by this Sta-
tute, and the several Alterations that have
been made as to holding the *Affizes*; there-
fore I shall omit it, and only explain what is
meant by the *Sheriffs* being commanded to
have the *Jury* before the King, if in the King's
Bench, or if in the Common-Pleas, before the
Justices at Westminster, at such a Day, which
if the Cause is tried in Term, is the next Return-
Day afterwards, if at the *Affizes*, at the first
Return in the subsequent Term, or before the
respective Chief Justice if in London or Middle-
sex; but if at the *Affizes*, or before his Majesty's
Justices appointed to hold the *Affizes*, according
to the Form of the Statute in that Case made and
provided, if they should come before, (that is be-
fore the Day of the Return of the *Habeas Cor-
pora*, or *Distringas*) at such a Day and Place,
(viz) when and where the *Settings* or the *Affizes*
are to be held thro' Default of the *Jurors*.

The *Jurors* are obliged by the *Venire* to
come before the *Judges* of the respective
Courts out of which it issues, at the Return
thereof to recognize, as has been said before,
and try whether what was contained in the
Issue,

The Attorney's

Issue, was on the Part of the Plaintiff or Defendant true. If the Jury comes not there upon the Return of the *Venire* for that Purpose, then they are *Defaulters*; and the Judges being obliged to try the Cause at *Nisi Prius*, upon this further Process of a *Habeas Corpora* or *Distringas*, is thro' the Default of the *Jurors*.

And therefore the Award of these Writs being with the Word *Nisi*, and the Writs themselves with the Word *Si*, may be, I think, easily reconciled; for the Award of a *Distringas* is an Entry signifying, that inasmuch as the Jury did not appear at the Return of the *Venire* to try the Cause; therefore they are respite until such a Day, which is the Return of the *Habeas Corpora* or *Distringas*; unless the Judges appointed to hold the *Affizes* at such a Place, should come there before the Return of the *Habeas Corpora* or *Distringas*, to try the Cause thro' the Default of the *Jurors* not having been at the Day and Place where the *Venire* was returnable for that Purpose; and then the Entry goes on further, let the Sheriff therefore have their Bodies, (that is, if the Judge should come at the *Sittings*, or at the *Affizes*, and the *Jurors* should again make Default) before the Judges of the Court, out of which the Process issues at the Day of the Return thereof.

And the Reason of a new *Placita* used in the *King's-Bench*, I apprehend to be very plain, because the other *Placita* is supposed to have been made use of when the Cause would have been tried before, at the Return of the *Venire*, but thro' the Default of the *Jurors*.

And therefore before there is an Entry of a *Jurata*, which is the Award of the *Distringas*,

it

it is thought convenient that there should be Com-
a new *Placita* to signify that the Cause is a-
gain brought on to be tried, which would have mon
been tried before at the Return of the *Venire*,
but for the Default of the *Jurors* in not being
there.

And when the Writ itself is made out, pur-
suant to such Award by the Court, it would be
inconsistent to make use of the Word *Nisi*
there, because by the Writ the Sheriff is com-
manded to have the Bodies of the *Jurors* at
the Day of the Return, or before the Judges at
the *Affizes*, if they should come there before
such Return, at such a Day thro' the Default
of the *Jurors*: For as has been said, whenever
they come to try a Cause upon a *Distringas*, or
a *Habeas Corpora*, it is for the Default of the
Jurors not having come before.

If the *Jurors* do come at the *Affizes*, and
try the Cause, then the *Postea*, which is the
Return of the Writ of *Nisi Prins*, takes Notice
of their having been there, and what was done
thereon; and the *Jury* are discharged, and
the Entry of their having been respited, is no
more than as being consonant to the Writ,
which commands the Sheriff to have them at
Westminster, or wherever the Writ is returna-
ble, lest they should not have come to do Ju-
stice to their Country; and that there may be
a Continuance of the Process, that upon their
further Default, if there had been any, a new
Process might have issued to compel them to
come.

The Form of a Subpœna for Witnesses.

George the Second, &c. To A. B. C. D. E. F.
and G. H. Greeting. We command you and
every of you (hereby firmly enjoining you,
that

The Attorney's

that you lay aside all Manner of Excuses and Delays whatsoever) that you be in your proper Persons before our Justices appointed to take the Assizes to be held at *Thetford*, in the County or *Norfolk*, on (such a Day) being the Day of the Assizes next following, to testify and declare the Truth in a certain Matter in Variance, depending in our Court before our Justices at *Westminster*, in an Action of Trespass upon the Case undetermined; between *Thomas Hunt* Plaintiff, and *John Gooch*, late of *Thetford* in the County of *Norfolk*, Gentleman, Defendant; and this you, nor either of you are in no wise to omit, under the Penalty of One Hundred Pounds, to be had of you and every of you. Witness Sir *Robert Eyre*, Knight, the twelfth Day of *February* in the sixth Year of our Reign.

If the Cause be in *London*, then you say,

That you be before Sir *Robert Eyre*, Knt. our Chief Justice of the Common-Bench, at *Guild-Hall*, in *London*, on *Wednesday* the 14th Day of *February*, now next to come, to testify, &c.

If in *Middlesex*, then you say,

Before Sir *Robert Eyre*, Knight, our Chief Justice of the Common-Bench, on *Tuesday* the 13th Day of *February*, now next ensuing, at *Westminster*, at the great Hall of Pleas, commonly called *Westminster-Hall*, to testify, and declare, &c.

The Forum of a Ticket is thus.

Mr. A. B.

By Virtue of a Writ of *Subpæna* to you directed, and herewith shewn unto you, you are Personally

Personally to be and appear before his Maje- Com-
sty's Justices of Assize, on _____ next, being mon
the _____ Day of _____ at _____ of the Clock Pleas.
in the _____ noon of the same Day, at the
Court then to be holden, at _____ to testi-
fy the Truth according to your Knowledge,
in a certain Cause now depending, and then
and there to be tried, between *Thomas Hunt*
Plaintiff, and *John Gooch* Gentleman, Defen-
dant, in a Plea of Trespass upon the Case, on
the Part of _____ And thereof you are not
to fail, on Pain of one Hundred Pounds, dated
the _____ Day of _____ in the sixth Year of
the Reign of our Sovereign Lord *George the*
Second, by the Grace of God of *Great-Britain*,
France and Ireland, King, Defender of the
Faith, and so forth, and in the Year of our
Lord One Thousand Seven Hundred and
Thirty-Two.

The Form of a Posten.

Afterwards on the Day, and at the Place
within contained, the within named *Thomas*
Hunt, by his Attorney within named, came
before Sir *Robert Eyre Knt.* Chief Justice to
our Sovereign Lord the King, of his Common-
Bench, Sir *John Fortescue Aland*, Knight, one
of his said Majesty's Justices of the said Com-
mon-Bench, Justices of our Sovereign Lord
the King, appointed to hold the Assizes for
the County of *Suffolk*, and the within named
John Gooch, altho' solemnly required, came
not there, but made default: Therefore let
the Jury, whereof Mention is made within, be
accepted of against him by his Default; where-
upon, the Jurors summon'd to be upon that
Jury, some of them, (that is to say) *Francis*
Scotchmore, *John Howard*, *Henry Britain*,
Phineas

Com-
mon
Pleas.

Phiness Todd, (so naming the rest that appear'd,) came, and were sworn upon that Jury: And because the Remainder of the Jurors of that Jury have not appeared, therefore others of Circumstances are by the Sheriff of the County aforesaid, at the Request of the said *Thomas Hunt*, and by the Command of the said Justices, put on a-fresh, whose Names are in the within-written Panel, to be affil'd according to the Statute in such Case made and provided; which said Jury so newly put on, (that is to say) *Henry York*, and *Robert York*, who being summon'd likewise, came to declare the Truth of the within Contents, together with the other Jurors before impanel'd and sworn, and being chosen, try'd and sworn, declare upon their Oaths, that the said *John* did undertake, in the Manner and Form, as the said *Thomas* within complains against him: And they assess the said *Thomas Hunt's* Damages, occasioned by the said within Contents, besides his Expences and Costs laid out by him in this Behalf, to twenty-two Pounds, and for his Expences and Costs to forty Shillings.

The Meaning of the Words, therefore let the Jury be accepted of against him by his Default, is when a Cause is call'd on, and the Plaintiff and Defendant are call'd; if the Defendant does not answer, or say any Thing, when the Panel is call'd over by way of *Challenge* to the *Array* or to the *Roll*; Then the Court proceeds onto to swear the *Jury*, and the Defendant not appearing to the Panel, the Cause is tried, and the Entry upon the *Posse* suggests, that the Defendant, tho' solemnly requir'd did not come, but made *Default*; therefore the *Jury* are taken, or more proper-

ly

ly accepted of by the Court, thro' the Defendant's *Default*; tho' in Truth, the Defendant and his Attorney might be there ready at the *Pleas*, first Calling of the *Cause*, yet the *Associate* makes the *Entry* in that Manner, that the Defendant made *Default*; but the best Reason I can give for it is, that the *Cryer* and *Associate* have two Shillings a-piece for the *Default*, tho' in Truth, none ever made, and the *Entry* is so drawn up to warrant that Fee.

Therefore the Author of a late Treatise, said to be Instructions for Clerks and Practisers of the *King's-Bench* and *Common-Pleas*, quite mistakes the Matter, when he translates the *Entry*; *Therefore let a Verdict of the Jury be taken against him by Default*, and he carries his Mistake farther, when he tells us, that this is the *Form of a Postea*, where the *Verdict* is for the Plaintiff by the Defendant's *Default*, (that is, says he) where the Defendant, after the Jury are ready to give their *Verdict*, doth not appear on his being called, knowing, that the *Verdict* will certainly pass against him; so far is that from Truth, if he would have look'd into the *Entries*, he would have found, that notwithstanding this *Entry* of the *Jury* being taken or accepted of by the Court, against him thro' his *Default*, yet the Defendant may give Evidence in the *Cause*, and obtain a *Verdict* against the Plaintiff in the same Manner, as if he had appeared when the *Panel* was called over, and that he lost no other Advantage thereby, but that he could not challenge any of the *Jurors*; and therefore the *Jury* are taken and accepted of, to try the *Cause*, by his *Default* of not appearing, when the *Panel* was call'd over. In *Lutwicb* 783. *Sleigh* and *Metham*, there the *Entry* is, that the *Jury* may be accepted of against

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against the Defendant, thro' his Default, tho' there was a vigorous Defence made for the Defendant; so in the Case of *North and Lad*, *Lut. 756.* there is the same Entry, that the Jury shall be accepted of against the Defendant, thro' his Default, where Part was found for the Plaintiff, and a special *Verdict* as to the rest; upon which Judgment was given for the Defendant; so in *i Saunders 245.* *Craft against Boite*, there is the same Entry, and a Defence made at the Trial; so that to imagine that this Entry, *quod Jurata capiatur versus eum per Defalt*, is only where the Defendant makes no Defence at the Trial, is wrong, and to translate the Words, *Jurata capiatur versus eum per Defalt*, that the *Verdict* shall be taken against him by his Default, is, for want of Understanding the Entry in *Latin*; which I think a Man should always do before he translates it into *English*, or else the Reader may be led into Errors, that he may not easily get rid of, when he finds it in a Book of so good Authority, as this Instruction to Clerks and Practi-
ciers seems to be.

A Writ of Inquiry.

GEORGE the Second, by the Grace of God, King of Great-Britain, France and Ireland, Defender of the Faith, and so forth, to the Sheriffs of London, Greeting. Whereas A. B. late of E. in your County, Yeoman, had been attach'd to appear in our Court, before our Justices at Westminster, to answer to C. D. of a Plea, that whereas (so go on with your Declaration to the Words, to the Damage of the said C. twenty Pounds, as it is said) and such Proceedings are had thereon in our Court, that the said C. ought to recover his Damages by reason of

of the Premisses, (this is said to be most proper where it is for Words or Torts) and if in Assumpsit, his Damages occasion'd for not performing several Promises and Undertakings made by the said A. to the said C. But because it is not known what Damages the said C. hath sustain'd by reason of the Premisses, or of the not performing the said several Promises and Undertakings. We command you, that by the Oath of twelve honest and lawful Men of your County, you diligently enquire what Damages the said C. hath sustain'd, as well by reason of the Premisses, (or of not performing the said several Promises and Undertakings) as for his Expences and Costs laid out by him about his Suit in this Cause. And the Inquisition, which you shall make thereon, do you make apparent to our Justices at Westminster, on the Octave of the Purification of the Blessed Virgin Mary, under your Seal, and the Seals of those, by whose Oaths you shall take such Inquisition. And have you there the Names of those, by whose Oaths you shall take the said Inquisition; and this Writ. Witness, Sir Robert Eyre, Knt. at Westminster, the twenty-third Day of January, in the sixth Year of our Reign.

A Writ of Inquiry where the Plaintiff died after Judgment, and before the Writ of Inquiry.

GEORGE the Second, &c. To the Sheriff of Middlesex, Greeting. Whereas E. P. Widow, (Executrix of the last Will and Testament of M. P. her late Husband deceased, late one of the Attornies of this Court) in the Term of the Holy Trinity, last past, prosecuted out of our Court of Common-Bench, against A. B. late of London, Distiller, our Writ of Capias, returnable

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turnable in our said Court of *Common-Bench*, before our Justices of the same, of a Plea of Trespass upon the Case; to which said Writ the said *A.* appeared at the Return of the said Writ; and thereupon the said *E.* as Executrix of the said last Will and Testament of the said *M.* her said late Husband deceased, declared against the said *A.* in *Michaelmas Term* last, in this our said Court of *Common-Bench*; for that whereas, (*and so go on with the Declaration*;) and thereupon such Proceedings were had, that it was consider'd here in our said Court of *Common-Bench*, by our Justices of the same Court, that the said *E.* ought to recover her *Damages*, occasion'd by the not performing of the said several Promises and Undertakings made by the said *A.* to the said *M.* in his Life-time, in the Form aforesaid. But because it was not known what *Damages* the said *E.* had sustained, by reason of the Premisses; *Therefore we commanded* you, that by the Oaths of twelve honest and lawful Men of your County, you should diligently enquire what *Damages* the said *E.* had sustained, as well by Reason of the Premisses, as for her *Expences and Costs*, laid out by her about her Suit in that Behalf. And that the *Inquisition* which you should take thereon, you should cause to be before our said Justices of our said *Common-Bench* at *Westminster*, on the Morrow of *St. Martin*, under your Seal, and the Seals of those, by whose Oaths you should take such *Inquisition*, as by the Record and Proceedings thereon, now remaining in our said Court of *Common-Bench*, before our said Justices at *Westminster*, manifestly may appear. Nevertheless an *Inquiry* of the said *Damages* yet remains to be made: And the said *E.* is now dead, as we have received Information from *R. B. Administrator*.

nistrator of all and singular the Goods and Com-
Chattles, Rights and Credits, which were of, mon-
and belong'd to the said *M.* at the Time of his Pleas.
Death unadministred by the said *E.* And
therefore at the Instance of the said *R.* in our
said Court, before our said Justices at *Westmin-*
ster, by our Writ of *Scire Facias*, issuing out of
this our said Court of *Common-Bench*, we late-
ly commanded you, that by honest and lawful
Men of your Bailiwick, you should *cause it to*
be known to the said *R.* that he was to have
been before our said Justices of this our said
Court of *Common-Bench* at *Westminster*, in *fif-*
teen Days of St. Martin, to shew Cause, if he
knew of, or had any thing to say for himself,
why the said *R.* should not recover the said
Damages, by reason of the Premisses against
the said *A.* according to the Form of the Sta-
tute in such Case made and provided, if the
said *A.* thought it Expedient so to do. *At*
which Day the said *R.* came into our said Court,
before our said Justices at *Westminster*; and
you our said Sheriff at the same Day, *made a*
Return to our said Writ, that by *E. S.* and *I. R.*
honest and lawful Men of your Bailiwick, you
had caused it to be known to the said *R.* that he
should have been before our said Justices at
Westminster, at the Day and Place aforesaid,
to have shewn Cause in Form aforesaid, if he
had thought it Expedient for him so to have
done, as by our said Writ he was commanded
to do; which said *R.* being so warned, and so-
lemnly required, did not come at that Day,
but made Default; whereby *it was consider'd*
in our said Court of *Common-Bench*, by our Ju-
stices of the same, that the said *R.* ought to
Recover the said *Damages* by reason of the
Premisses. *But because it is Unknown what*
Damages had been sustained by the said *E.* by

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reason of the Premisses ; therefore we command you, that by the Oaths of twelve honest and lawful Men of your Bailiwick, you diligently enquire what *Damages* the said *E.* sustained, as well by reason of the Premisses, as for her *Expences* and *Costs*, laid out by her about her said Suit in that Behalf. And the *Inquisition* which you shall take thereupon, do you make appear before our said Justices of our said Court of Common-Bench at *Westminster*, on the *Octave of St. Hillary*, under your Seal, and the Seals of those, by whose Oaths you shall make such *Inquisition*, and have you there likewise the Names of those Persons, by whose Oaths you take such *Inquisition*, and this Writ. Witnes Sir Robert Eyre, &c.

A Capias ad Satisfaciendum.

GEORGE the Second, &c. To the Sheriff of Middlesex, Greeting. We command you, that you take *A. B.* late of *Westminster*, in your County, *Esg*; if he is to be found in your Bailiwick, and safely keep him, so that you have his Body before our Justices at *Westminster*, on the *Octave of the Purification of the Blessed Virgin Mary*, to make Satisfaction to *C. D.* for ten Pounds, which in our Court, before our Justices at *Westminster*, were awarded to *C. D.* for his *Damages*, which he sustain'd, by reason of a certain *Trespass upon the Case*, committed by the said *A.* to the said *C.* at *Westminster* aforesaid, in your County ; if it be in an *Action upon the Case upon an Assumpsit*, then say for his *Damages* which he has sustained, by reason of not performing several *Promises and Undertakings* made by the said *A.* to the said *C.* at *Westminster* aforesaid, in your County, whereof he is convicted ; and have you there this Writ. Witnes

Witness Sir Robert Eyre, at Westminster, the 23d Day of January, in the sixth Year of our Reign.

Common Pleas.

If in Covenant.

For his Damages which he sustained by reason of a certain *Covenant*, (or of certain *Covenants*) made between them, according to the Form and Effect of a certain *Indenture*, (or certain *Articles*, as the Case is) made at Westminster, in your County, and broken by the said *A.* (then as in the former.)

If in Trespass and Assault.

For his Damages which he sustained by reason of a certain *Trespass* and *Assault*, (or *Trespass*, *Assault* and *Imprisonment*, as the Case is) committed by the said *A.* against the said *C.* against our Peace at *M.* in your County, whereof he is convicted, (then as in the Former.)

Upon a Nonsuit in Case.

To make Satisfaction to *A. B.* late of *W.* in your County for one hundred Shillings, which in our Court before our Justices at Westminster, were awarded to the said *A.* by the Discretion of our same Justices, according to the Form of the Statute lately made and provided against Parties, Plaintiffs, who should not prosecute their Writs, and proceed on the same, for his *Expences* and *Custs*, which he sustain'd by *C. D.* s not proceeding on his Writ, in a certain Plea of *Trespass on the Case*, prosecuted and sued out by the said *C. D.* against the said *A.* in our same Court; and have you there this Writ. Witness, &c.

Com-
mon
Pleas.

Another Form.

For his Expences and Costs which he laid out, by reason of a groundless *Claim* of *C. D.* in a certain Plea of Debt, upon a Demand of twenty Pounds, prosecuted by the said *C.* against the said *A.* whereof the said *C.* is convicted; and have you there this Writ.

If in Ejectment.

In a certain Plea of *Trespass* and *Ejectment*, wherein the said *C.* proceeds no further on his Writ thereof against the said *A.* whereof he is convicted.

If in Debt.

To make Satisfaction to *C. D.* as well for a Debt of twenty Pounds, which the said *C.* hath lately recovered against him in our Court before our Justices at *Westminster*; as also for fifty Shillings, which, in our same Court were awarded to the said *C.* for his Damages which he had sustained, by reason of his detaining the said Debt, whereof the said *A.* is convicted. And have you there this Writ. Witness, &c.

If it be against an Executor de bonis propriis, after a Devastavit return'd, then thus:

We command you, that you take *A. B.* late of *Thetford*, in your County, *Cloathworker*, Executor of the last Will and Testament of *C. T.* if he should be found in your Bailiwick, and safely keep him, so that you have his Body before our Justices at *Westminster*, on the Morrow of the Purification of the Blessed Virgin Mary, to make Satisfaction to *C. D.* as well for a Debt of.

of twenty Pounds, which the said *C.* hath recovered against him in our Court, before our Justices at *Westminster*; as for fifty Shillings, which in our same Court were awarded to the said *C.* for his *Damages* which he had sustained, by reason of detaining the said *Debt* *whereof he is convicted*. And whereupon it is consider'd in our same Court, that the said *C.* ought to have an *Execution* against the said *A.* *Executor*, as aforesaid, for the said *Debt* and *Damages* to be levied of the proper *Goods* and *Chattels* of the said *A.* because the said *A.* hath wasted, converted, and disposed of to his own *Use*, divers *Goods* and *Chattels*, which were of, and belong'd to the said *E. T.* the *Testator* at the *Time* of his *Death*, which came to the *Hands* of the said *A.* after the *Death* of the said *E.* to be administr'd, to the *Value* of the said *Debt* and *Damages*, as you your self, *on the Octave of St. Hillary* last past, returned to our Justices at *Westminster*. And have you there this *Writ*. *Witness*, &c.

A Testatum Ca. Sa.

As in the first Ca. Sa. here inserted, to the Words, whereof he is convicted, and then you say, And whereof our Sheriff of Suffolk hath returned (or made a Return) to our Justices at Westminster, on the Octave of St. Hillary last past, that the said A. is not to be found in his Bailiwick. And in as much as it is sufficiently testified in our same Court, that he lurks and wanders up and down in your County. And have you there this Writ. Witness, &c.

A Non omittas Ca. Sa.

We command you omit not, by means of the *Liberty of St. Etheldred* in your County,

but enter therein, and take *A. B. and so on, as in the former, to the Words* whereof he is convicted ; and whereupon you your self have return'd (or made a Return to our Justices at *Westminster, on the Octave of St. Hillary* last past, *and some say only* (at a certain Day now past) that in order to have the said *Writ* duly executed, you had sent to the *Bailiff* of the said *Liberty* of St. *Etheldred* in your County, who hath the full Power of returning of all *Writs* and *Precepts*, and of the *Execution* of the same within the said *Liberty*, for that you could not execute the said *Writ* in your County out of the said *Liberty*, (which said *Bailiff* had given you no manner of *Answer* thereto.) And have you there this *Writ*.

A Testatum non Omitas Ca. Sa. is no more than by beginning the *Writ* as before, and adding the Words belonging to the *Testat* and *Non omittas* after it.

A Capias ad Satisfaciendum for an Executor in Debt, upon a Judgment by Default after a Sci. Fa.

GEORGE the Second, &c. (as in the *Ca. Sa. in Debt*) only you say, to make Satisfaction to *C. D. Widow, Executrix* of the last Will and Testament of *W. C.* as well for a *Debt* of twenty Pounds, which the said *W.* in his Life-time recovered against him, before our Justices at *Westminster*, as also for fifty Shillings, which in our same Court were awarded to the said *W.* in his Life-time, for his Damages which he sustained by reason of detaining his said *Debt*, whereof he is convicted : *And whereupon it is consider'd* in our same Court, that the said *C.* ought to have an *Execution* against the said *A.* for

for the said Debt and Damages by his Default, Com-
And have you there this Writ. Witness, &c. mon
Pleas.

*A Capias ad Satisfaciendum, for the Residue of
a Debt and Damages, Part having been levied
by a Fieri Facias.*

GEORGE the Second, &c. To the Sheriff of Suffolk, Greeting. Whereas we lately commanded you, that you should cause to be made of the Goods and Chattels of A. B. late of Stowmarket, in your County, Hesier, as well a certain Debt of twenty Pounds, which C D. had recovered against him in our Court before our Justices at Westminster; as also sixty Shillings, which in our same Court were awarded to the said C. for his Damages which he had sustained, by reason of detaining his said Debt; And that you should have the Money before our Justices at Westminster, in fifteen Days from the Day of St. Martin, to render to the said C. for his said Debt and Damages, whereof the said A. is convicted, and you your self return'd (or made a Return) to our Justices at Westminster, at that Day, that you had caused to be made, the Sum of ten Pounds, of the said Goods and Chattels of the said A. and that you had the Money ready at the Day and Place aforesaid; and that the said A. had no other, or any more Goods and Chattels in your Bailiwick, whereby you could cause to be made or levied the Residue of the said Debt and Damages, as you had been commanded by the said Writ; therefore we command you, that you take the said A. if he should be found in your Bailiwick, and safely keep him, so that you have his Body before our Justices at Westminster on the Octave of St. Hillary, to make Satisfaction to the said C. for the Residue of the

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Common Pleas. said Debt and Damages; and have you there this Writ. Witness, &c.

A Fieri Facias upon Promises unperformed.

GEORGE the Second, &c. To the Sheriff of Suffolk, Greeting. We command you, that you cause to be made of the Goods and Chattels of A. B. late of Stowmarket, in your County, Yeoman, in your Bailiwick, twenty Pounds, which in our Court, before our Justices at Westminster, were awarded to C. D. for his Damages which he sustained, by reason of not performing certain Promises and Undertakings made by the said A. to the said C. at St. Edmunds-Bury in your County; and have you the Money before our Justices at Westminster, on the Octave of St. Hillary, to render to the said C. for his said Damages, whereof the said A. is convicted; and have you there this Writ. Witness, &c.

For Words.

For his Damages which he sustained, by reason of speaking, and publishing certain scandalous Words by the said A. of the said C. at St. Edmunds-Bury in your County, whereof the said A. is convicted, &c.

If in Covenant.

For his Damages which he sustained, by reason of the Breach of a certain Covenant, (or Covenants, as the Case is) made between the said C. and the said A. according to the Force, Form, and Effect of certain Articles (or of certain Indentures, as the Case is) made at St. Edmunds-Bury in your County, whereof the said A. is convicted, &c.

If

If in Ejectment.

For his *Damages* which he sustained by Reason of a certain *Trespass and Ejectment*, committed by the said *A.* against the said *C.* at *St. Edmunds-Bury* in your County, with Force and Arms against our Peace, whereof the said *A.* is convicted, &c.

If in Replevin.

By Reason of taking and unjustly detaining Cattle of the said *C.* at *St. Edmunds-Bury*, in a certain Place there called *G.* whereof he is convicted.

If in Trespass.

For his *Damages* which he sustained by Reason of a certain *Trespass* committed with Force and Arms, and against our Peace, by the said *A.* against the said *C.* at *St. Edmunds-Bury* in your County, whereof he is convicted, &c.

If in Debt.

We command you, that you cause to be made of the Goods and Chattles of *A. B.* late of *Ipswich* in your County, Yeoman, in your Bailliwick, as well a certain *Debt* of forty Pounds which *C. D.* hath recovered against him, in our Court, before our Justices at *Westminster*, as also forty Shillings which in our same Court were awarded to the said *C.* for his *Damages*, which he sustained by Reason of delaying his said *Debt*, whereof the said *A.* is convicted.

*The Attorney's**A Testatum Fieri Facias in Debt.*

Whereof he is convicted: And inasmuch as our Sheriff of *Norfolk* hath returned, (or made a Return) to our Justices at *Westminster*, at a certain Day now past, that the said *A.* had no Goods or Chattels in his Bailiwick, whereof the said *Debt* and *Damages*, or any Part thereof, could be made or levied. Whereas it is testified in our Court, that the said *A.* hath sufficient Goods and Chattels in your Bailiwick, whereof the said *Debt* and *Damages* may be made and levied; and have you there this Writ. *Witness*, &c.

A Non Omittas Fieri Facias.

George the Second, &c. To the Sheriff of *Suffolk*, Greeting. We command you, that you omit not, by means of the Liberty of *St. Edmunds-Bury* in your County, but that you enter therein and cause to be made of the Goods and Chattels of *A. B.* late of *St. Edmunds-Bury* in your County, *Hosier*, within the said Liberty, as well a certain *Debt* of one Hundred Pounds, which *C. D.* hath recovered against him in our Court, before our Justices at *Westminster*, as also fifty *Shillings*, which in our same Court were awarded to the said *C.* for his *Damages* which he sustained by Reason of detaining the said *Debt*. And have you the Money before our Justices at *Westminster*, on the *Octave* of *St. Hillary*, to render to the said *C.* for his *Debt* and *Damages* aforesaid; inasmuch as you yourself have returned, (or made a Return) to our Justices at *Westminster*, at a certain Day now past; that in order to have a due Execution of the said Writ to you directed, you

you had sent to the *Bailiff* of the said *Liberty*, Com-
who had full Power of executing and return-
ing all *Writs* within the said *Liberty*; and that Pleas.
the said *Writ* could not be executed in your
County, out of the said *Liberty*, (which said
Bailiff had given you no Answer thereto; and
have you there this *Writ*. *Witness*, &c.

*A Testatum Fieri Facias against an Executor,
after a former Testatum had issued, and
nulla bona returned after a Devictavit.*

George the Second, &c. To the Sheriff of
Norfolk, Greeting. Whereas we commanded
our Sheriff of Middlesex, that of the Goods
and Chattels which were of and belonged to
C. B. Gentleman, lately called *C. B. of the Parish*
of St. Martins in the Fields, in the same County
of Middlesex, Gentleman, at the Time of his
Death, in the Hands of *W. J.* late of the *Parish*
of St. Clements Danes, in the said County of Mid-
dlesex, Hosier, and Anne his Wife, Executrix of
the last Will and Testament of the said *C.* un-
administred, he should cause to be made as well
a certain *Debt* of *One Hundred and Ten Pounds*,
which *T. F. Administrator* of all and singular
the Goods and Chattels of *P. W.* who died in-
testate, recovered in our Court, before our Ju-
stices at *Westminster*, against them; as also
seven Pounds and ten Shillings, which in our
same Court were awarded to the said *E. T.* for
his Damages which he sustained by Reason of
detaining the said *Debt*, to be levied of the
Goods and Chattels which were of, and be-
longed to the said *C.* at the Time of his Death,
in the Hands of the said *W. J.* and *Anne his Wife*, unadministred; if they had so many
Goods and Chattels which were of and belong-
ed to the said *C. D.* at the Time of his Death.

in their Hands unadministred : If they had not so many, then the said *Damages* to be levied of the proper Goods and Chattels of the said *W. J.* and that he should have the Money there before our Justices at *Westminster*, in three Weeks from the Day of *St. Michael*, and that Writ. And whereupon our said Sheriff of *Middlesex* at that Day, made a Return to our Justices at *Westminster*, that before that Writ came to him, directed as aforesaid, the said *William* and *Anne* had wasted, converted and disposed of to their own Use, divers Goods and Chattels which were of and belonged to the said *C.* at the Time of his Death, to the Value of fifty Pounds. And further our said Sheriff of *Middlesex* returned, that the said *William* and *Jane* had not any Goods and Chattels which were of and belonged to the said *C.* at the Time of his Death, in his Bailiwick ; whereby the said *Debt*, or any Part thereof, could be levied ; nor had they any Goods or Chattels of their own in his Bailiwick, whereby the said *Damages*, or any Part thereof, could be levied, as by the said Writ he was commanded. And thereupon it having been testified in our Court, before our Justices at *Westminster*, that the said *W.* and *J.* had sufficient Goods and Chattels of their own in *London*, whereof the said fifty Pounds of the said *Debt* and *Damages* might be made and levied ; We therefore commanded our Sheriffs of *London*, that they should cause to be made of the said proper Goods and Chattels of the said *W.* and *A.* in their Bailiwick, the said fifty Pounds of the said *Debt* and *Damages* ; and that they should have the Money before our Justices at *Westminster*, in fifteen Days from the Day of *St. Martin*, to render to the said *E.* towards his *Debt* and *Damages* aforesaid. Whereupon

our

our said Sheriffs of London, at that Day made Com-
a Return to our Justices at Westminster, that mon-
the said *W.* and *J.* had not any Goods or Chat- Pleas.
tels in their Bailiwick, whereby the said fifty
Pounds of the said Debt and Damages, or any
Part thereof could be made or levied. *And*
whereas it is sufficiently testified in our said
Court, before our said Justices at Westminster,
that the said *W.* and *J.* have sufficient Goods
and Chattels in your County, whereof the said
fifty Pounds of the said Debt and Damages may
be made and levied; *Therefore we command*
you, that of the Goods and Chattels of the
said *W.* and *J.* in your Bailiwick, you cause to
be made the said fifty Pounds of the said Debt
and Damages, and have you the Money before
our Justices at Westminster, on the Octave of St.
Hillary, to render to the said *E.* in Form a-
foresaid, and this Writ. *Witness,* &c.

*If it be against an Administrator without a
Devalstavit, then you say,*

We command you, that of the Goods and
Chattels which were of and belonged to *R. G.*
at the Time of his Death, who died intestate,
in the Hands of *A. B.* Widow, Administratrix
of all and singular the Goods and Chattels,
which were of the said *R.* in your Bailiwick,
you cause to be made as well a certain Debt
of fifty Pounds, which *J. S.* Gentleman, hath
recovered against her in our Court before our
Justices at Westminster; as also fifty Shillings,
which were awarded to the said *J.* in our same
Court, for his Damages which he sustained by
Reason of detaining the said Debt, to be le-
vied of the Goods and Chattels which were
of the said *P.* at the Time of his Death, in the
Hands of the said *A.* unadministred, if she hath
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so many; and if not, then the said Damages to be levied of the proper Goods and Chattels of the said *A.* and have you the Money (as in the former.)

Judgments by Default.

AND the said *A.* *B.* by *C.* *D.* his Attorney, comes and defends the Force, Injury, and Damages, and whatever else he ought to defend, when and where the Court will consider thereof, and says nothing to Bar or Obstruct the *Action* of the said *C.* whereby the said *E.* remains undefended by the said *A.*; for which Reason the said *E.* ought to recover his Damages against the said *A.* occasioned by the Premisses. But because it is not known what Damages the said *E.* hath sustained by Reason of the Premisses; therefore the Sheriff is commanded, that he diligently enquire, by the Oath of twelve honest and lawful Men of his said County, what Damages the said *E.* hath sustained, as well by Reason of the Premisses, as for his Expences and Costs laid out by him about his Suit in this Cause. And that the Sheriff should cause the *Inquisition* that he takes thereon to be here before his Majesty's Justices at *Westminster*, in three Weeks from the Day of *St. Michael*, under his own Seal, and the Seals of those, by whose Oath he should take such *Inquisition*; and that he should have there at the same Time the said Writ, directed to him, as aforesaid.

If it be in *Affumpſit*, some have made use of this Form, instead of saying,

Whereby the said E. ought to recover his Damages.

*mages, occasioned by Reason of the Premisses, to Com-
say, Wherby the said E. ought to recover Da-
mages, occasioned by the said A.'s not performing
several Promises and Undertakings made by him
to the said E. and so on, as in the former.*

If it be in *Trespass*, it is proper to say,

Whereby the said A. ought to recover his
Damages, occasioned by the said *Trespass*, com-
mitted by the said A. against him the said E.

If in *Trespass, Assault and Imprisonment*,
then you say,

Whereby the said E. ought to recover a-
gainst the said A. his *Damages*, occasioned by
the said *Trespass, Assault and Imprisonment*,
committed by the said A. against him the
said E.

If in *Covenant*.

Whereby the said E. ought to recover a-
gainst the said A. his *Damages*, occasioned by
the said Breach (or Breaches, as the Declara-
tion is) of *Covenants*.

A Judgment on nil' dicit in Debt.

You say as in the former, to these Words.

Whereby the said E. remains undefended by
the said A. Therefore it is considered, that the
said E. ought to recover against the said A.
his said *Debt and his Damages*, occasioned by
detaining the same, adjudged by this Court
to the said E. with his Assent, to fifty Shil-
lings; and the said A. shall be amerc'd, and
so forth..

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Judgment by Cognovit Actionem.

And the said *A.* by *C. D.* his Attorney, (as in the first) And saith, that he cannot deny the said *Action* of the said *E.* nor, but that he *owes* to the said *E.* the said *twenty Pounds.*

And if it be upon Bond, you say thus,

And saith, that he cannot deny, but that the said *Writing Obligatory* is his *Deed*, nor, but that he *owes* the said *E.* the said *Sum of twenty Pounds*, in such *Manner and Form* as the said *E.* above declares against him: *Therefore it is considered*, that the said *E.* ought to recover his said *Debt* against the said *A.* and his *Damages* occasioned by detaining the same, awarded to the said *E.* with his *Consent*, by this *Court*, to *fifty Shillings*. And the said *A.* shall be *amerc'd*, and so forth.

Non sum informatus in Caso.

And the said *A.* by *C. D.* his Attorney, comes and defends the *Force, Injury and Damages*, and so on, as in the former.) And the said Attorney saith, that he is *not instructed* by his *Client* the said *A.* to give any *Answer* for him to the said *Complaint* of the said *E.* and saith nothing more thereto, whereby the said *E.* remains undefended by the said *A.* For which Reason the said *E.* ought to recover his *Damages* occasioned by the *Premisses*. But because it is not known what *Damages*, so as in the Entry of a *Nil dicit in Caso*,

If it be in *Debt* it varies from the former no otherwise than as a *Nil dicit in Caso* varies from

from a *Nil dicit* in Debt, which may be very easily observed without a useless Repetition.

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A Judgment where the Defendant relinquishes his Plea of Solvit ad diem, and confesses the Action.

And hereupon the said *A.* relinquishes his said Plea, pleaded by him, as above, and saith, that he cannot gain-say the said *Action* of the said *E.* and owns, that he hath not paid to the said *E.* the said Sum of fifty Pounds, upon the said twenty-fifth Day of December, which he ought to have done, according to the Form and Effect of the said *Condition*, as the said *E.* above declares against him. Therefore it is considered, that the said *E.* ought to recover against the said *A.* his said *Debt* and his *Damages*, occasioned by detaining the same, which are awarded to the said *E.* by this Court, with his Consent, to fifty *Shillings*; and the said *A.* shall be amerced, and so forth.

A Judgment upon a Demurrer to a Scire Facias upon a Recognizance.

At which Day came here as well the said *E.* as the said *A.* by their said Attorneys. And thereupon the Premisses being here seen, and fully understood by the *Justices* of this Court, it appears to the said *Justices*, that the said Plea of the said *E. G.* and *N.* pleaded in Delay of the *Execution* as aforesaid, are insufficient in Law to debar the said *E.* from having his said *Execution* against the said *E.* for two Hundred Pounds, and against the said *G.* and *N.* for the said Hundred Pounds, by them severally acknowledged in Form aforesaid, as the said *E.* hath above alledged. Therefore it is

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is considered, that the said *N.* ought to have his Execution against the said *B.* for the said two Hundred Pounds, acknowledged by him in Form aforesaid, and against the said *G.* and *N.* for the said Hundred Pounds, acknowledged by them and each of them severally and respectively in Form aforesaid, and so forth.

An Elegit.

George the Second, &c. To the Sheriff of Berkbyre, Greeting. Whereas *C. D.* lately in our Court, before our Justices at Westminster, by the Consideration of the same Court, recovered against *A. B.* late of Farringdon in your County, Mercer, as well a certain Debt of Two Hundred Pounds, as also One Hundred Shillings, which in our same Court were awarded to the said *C. D.* for his Damages which he had sustained by Reason of detaining the said Debt, whereof he is convicted. And the said *A.* afterwards came into our same Court, and according to the Form of the Statute in that Case made and provided, made his Election to have delivered to him all the Goods and Chattels of the said *A. B.* (except his Oxen and Beasts of Plow) and likewise a Moiety of all his Lands and Tenements in your Bailiwick, to hold the same Goods and Chattels as his own Goods and Chattels, and also to hold the said Moiety as his Freehold, to him and his Assigns, according to the Form of the said Statute, until he shall have levied the said Debt and Damages thereon. And therefore we command you, that without Delay you cause to be extended at a reasonable Price, and delivered to the said *A.* all the Goods and Chattels of the said *A.* (except his Oxen and Beasts of Plow) and likewise a Moiety of all his Lands and Tenements in

in your Bailiwick, of which the said *A.* was Com-
seized, *on the Morrow of the Holy Trinity*, in the mon-
sixth Year of our Reign, (*at which Day Judg- Pleas.*
ment was given thereon) or at any Time since,
for him to keep the said Goods and Chattels
as his own Goods and Chattels; and also for
him and his Assigns to keep the said *Moiety as*
their Freehold, according to the Form of the
said Statute, until the said *Debt and Damages*
shall be thereof levied. *And after what Man-*
nner you shall execute this our Precept, do you
make appear to our Justices at Westminster, in
three Weeks from the Day of St. Michael, under
your Seal, and the Seals of those Persons, by
whose Oaths you shall make such Extent and
Appraisalment. And have you there this Writ,
Witness, &c.

An Elegit after an Elegit.

George the Second, &c. To the Sheriff of
Middlesex, Greeting: Whereas *C. D.* lately in
our Court, before our Justices at Westminster,
by the Consideration of the same Court had
recovered against *A. B.* late of *Hampstead* in
your County, forty Pounds, which in our same
Court were awarded to the said *C.* for his *Da-*
mages which he had sustained by Reason of a
certain Trespass committed by the said *A.* a-
gainst the said *C.* with Force and Arms, and
against our Peace, at *Hampstead* aforesaid in
your County, *whereof he is convicted*, and the
said *C.* afterwards came into our Court, and
according to the Form of the Statute in such
Case made and provided, chose to have deli-
vered to him all the Goods and Chattels of the
said *A.* (*except his Oxen and Beasts of Plow*) and
likewise a *Moiety* of all his Lands and Tene-
ments in your Bailiwick, *to keep the same*
Goods

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Goods and Chattels as his own Goods and Chattels, and also to hold the said Moiety as his Freehold, to him and his Asigns, according to the Form of the said Statute, until the said Damages should be levied thereupon. Wherefore we commanded you, that without Delay you should cause to be extended by a reasonable Price, and delivered to the said C. all the Goods and Chattels of the said A. (except his Oxen and Beasts of Plow) and likewise a Moiety of all his Lands and Tenements in your Bailiwick, of which the said A. was seized or possessed of, in three Weeks from the Day of St. Michael last past, (on which Day Judgment was given thereon) for him to keep the said Goods and Chattels as his own Goods and Chattels ; and also to hold the said Moiety as his Freehold, to him and his Asigns, according to the Form of the said Statute, until he should have levied the said Damages thereof ; and in what Manner you should have executed that our Precept, you was to make appear to our Justices at Westminster, on the Octave of St. Hillary last past, and you having returned to our Justices at Westminster, a certain Inquisition, taken before you at the Castle of Norwich, on the Tenth Day of January last past, by the Oaths of twelve honest and lawful Men of your Bailiwick ; by which it is found, that the said A. was seized of the Manor of, &c. (reciting the Lands returned by the said Inquisition.) Whereupon the said C. came into our Court, saying, that the said A. at the Time of giving the said Judgment, and afterwards had divers Lands and Tenements in your County, of the yearly Value of forty Pounds, besides the said Manor, &c. (here naming the Lands) above specified in the said Inquisition. And was also possessed of divers Goods and Chattels

tels in your County, to the Value of forty Com-
Pounds, which you might have extended, ap-
praised and delivered to the said C. And there-
fore we command you, as we before command-
ed you, that you cause to be extended by a
reasonable Price, and to be delivered to the
said C. all the said Goods and Chattels of the
said A. (except his Oxen and Beasts of Plow) and
likewise a Moiety of all his Lands and Tene-
ments in your County, besides the said Manor,
&c. (naming the Lands belonging thereto) above
specified in the said *Inquisition*, of which the
said A. at the Time of giving the said *Judg-
ment*, or at any Time since, was seized or
possessed of; and also a Moiety of the said Ma-
nор and Tenements, with the Appurtenances
above specified in the said *Inquisition*, for him
and his Assigns to hold the same as their Free-
hold, according to the Form of the Statute in
such Case made and provided, until the said
Damages shall be levied thereupon. And in
what Manner you shall execute this Precept,
do you make appear to our Justices at *West-
minster*, on the Octave of the Purification of the
Blessed Virgin Mary, under your Seal, and the
Seals of those, by whose Oaths you shall take
such *Inquisition*; and have you there this Writ.
Witness, &c.

*An Elegit of a Moiety of an annual Rent against
Tertenants, after a Scire Facias.*

George the Second, &c. To the Sheriff of
Kent, Greeting. Whereas in our Court, before
our Justices at *Westminster*, it was lately con-
sidered, that T. B. ought to have an *Execution*
against H. C. by his *Default*, as well for a *Debt*
of one Hundred and ninety *Pounds*, which the
said T. heretofore in our Court, (that is to say)

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in *Hillary Term*, in the fifth Year of our Reign, before Sir *Robert Eyre*, Knight, and his Brethren, our Justices of our Court of *Common Pleas at Westminster*, by the Consideration of the same Court, had recovered against *J. G. late of Greenwich in your County, Carpenter*; as also eight Pounds which in our same Court were awarded to the said *E. T.* for his *Damages*, which he had sustained by Reason of detaining the said *Debt*, of a certain annual Rent issuing out of the Manor of *Wm.* in your County, by the *Default* of the said *H.* And inasmuch as you yourself returned to our Justices at *Westminster, on the Octave of St. Martin* last past, that the said *H.* was Tenant of an annual Rent of Thirty-two Pounds, and that the said annual Rent of Thirty-two Pounds was due to the said *J. G. on the Octave of St. Hillary, in the sixth Year of our Reign, at which Day Judgment was given against the said H.* *J.* for the *Debt and Damages* aforesaid. And afterwards the said *T.* came into our same Court, and according to the Form of the said Statute in such Case made and provided, chose to have deliver'd to him a Moiety of the said yearly Rent, issuing out of the said Manor, with the Appurtenances to hold to him and his Assigns, according to the Form of the said Statute, until the said *Debt and Damages* should be levied thereof. And therefore we command you (as in the former.)

An Elegit after a Fieri Facias, upon which a Devastavit had been found by a Verdict against Executors.

George the Second, &c. To the Sheriff of Surrey, Greeting. Whereas by our Writ we lately commanded our Sheriffs of London, that

that of the Goods and Chattels which were of, and belong'd to *H. B.* lately called *H. B.* of *Southwark*, Esq; at the Time of his Death in the Hands of *M. B.* late of *Croydon*, in your County, Gent. and *R. S.* late of *Kingston*, in your County, Malster, being Executors of the last Will and Testament of *H. B.* the Testator, in their Bailiwick, they should cause to be made, as well a Debt of two hundred Pounds, which *W.* had lately recovered in our Court, before our Justices at *Westminster*, against the said *M. B.* and *R. S.* as also ten Pounds, which in our same Court were awarded to the said *W. S.* for his Damages, which he sustaine by reason of detaining the said Debt, to be levied of the said Goods and Chattels, if they had so many unadministred in their Hands; and if they should not have so many, then the said Damages to be levied of the proper Goods and Chattels of the said *M. B.* and *R. S.* and that they should have the Money before our Justices at *Westminster*, on the Octave of *St. Martin* last past, to render to the said *W.* for his said Debt and Damages, whereof the said *M. B.* and *R. S.* are convicted. And the same Sheriffs at that Day, return'd to our Justices at *Westminster*, that the said *M. B.* and *R. S.* at the Day of suing out the said Original Writ of the said *W.* (that is to say) on the second Day of *April*, in the fifth Year of our Reign, had divers Goods and Chattels which were of, and belong'd to the said *H. B.* the Testator, at the Time of his Death in their Hands unadministred, to the Value of two hundred Pounds, whereof the said *W.* might have had Satisfaction for his said Debt, as it was found by a certain Jury of the Country, by Vertue of our Writ of *Nisi Prius*, taken at *Guild-Hall* of the City of *London*, before Sir *Robert Eyre*, Knight,

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our Chief Justice of our said Court of *Common Pleas*, (there being associated to him *John Higham*, Gent. according to the Form of the Statute in such Case made and provided) which said Goods and Chattels, they the said *M. B.* and *R. S.* had wasted, converted and disposed off to their own Use; whereby the said Sheriffs were not able to levy the said Debt and Damages, or any Part thereof. And our said Sheriffs of *London* further returned, that the said *M. B.* and *R. S.* had not any Goods or Chattels in their Bailiwick, whereof they were able to levy the said Debt and Damages, or any Part thereof, as they had been commanded to do; *wherefore it was consider'd* in our same Court, that the said *W.* should have an Execution against the said *M. B.* and *R. S.* for the said Debt and Damages, to be levied upon the proper Goods and Chattels of the said *M. B.* and *R. S.* And the said *W.* afterwards came into our same Court, and according to the Form of the Statute in such Case made and provided, chose to have deliver'd to him, all the Goods and Chattels of the said *M. B.* and *R. S.* (*except their Oxen and Beasts of Plow*) and likewise a Moiety of all their Lands and Tenements in your Bailiwick, (as in the former.)

*An Elegit after a Scire Facias, upon a Recog-
nizance against Bail taken in the Time of Va-
cation before the Lord Chief Justice.*

GEORGE the Second, &c. To the Sheriff of *Suffex*, Greeting. Whereas lately in our Court, before our Justices at *Westminster*, it had been consider'd, that the said *K. W.* ought to have an Execution against *L. P.* of *Chichester*, in your County, *Mercer*, and *J. C.* of the same

same Place *Woollendraper*, for two hundred Com-
and six Pounds, thirteen Shillings and four mon-
Pence, which they the said *L.* and *I.* and each Pleas.
of them, on the 29th Day of *November*, in the
fifth Year of our Reign, before Sir *Robert Eyre*,
Knt. our Chief Justice of our Court of *Common
Pleas*, at his Chamber, situate in *Serjeants-Inn*
in *Chancery-Lane*, had acknowledged to owe
to the said *T.* to be levied of the Goods and
Chattels, Lands and Tenements of them, and
each of them, as by the Recognizance thereof
delivered by the said Chief Justice, into our
same Court, before the said Sir *Robert Eyre*
and his Brethren, our said Justices of the
Court of *Common Pleas* to be enrolled, and
which is now enrolled of Record in the said
Court, may manifestly appear. And the said
T. afterwards came into our said Court, and
according to the Form of the Statute in such
Case made and provided, chose to have deli-
vered to him, all the Goods and Chattels of
the said *L.* and *I.* (except their Oxen and Beasts
of *Plow*) and likewise a Moiety of all their
Lands and Tenements in your County, to
hold the same as his Freehold, to him and his
Assigns, according to the Form of the said Sta-
tute, until the said Debt and Damages shall be
levied thereof. And therefore *We command*
you, that without Delay, you cause to be ex-
tended by a reasonable Price, and to be deli-
vered to the said *T.* all the Goods and Chattels
of the said *L.* and *I.* (except their Oxen and
Beasts of *Plow*) and likewise a Moiety of all
their, and each of their Lands and Tenements
in your Bailiwick, whereof they, or either of
them were seized or possessed of, at the Time
of their Entry into the said Recognizance, or
at any Time since (as in the former.)

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I thought it would not be disagreeable to mention some few Observations I have made on Judgments, wherein I have endeavoured to avoid Prolixity, and they are as follow.

Coke in his first *Institutes* 39. tells you, that *Judicium* is *quasi Juris dictum*, the very Voice of Law and Right; and the antient Words of a Judgment are very significant, which are *consideratum est*, because that Judgment is ever given by the Court upon due Consideration; and some Judgments are *Final*, others *Interlocutory*.

An *Interlocutory Judgment* is the Judgment that the Court gives, upon due Consideration had of the Matter, that the Plaintiff ought to recover; but it being uncertain what Damages he ought to recover, therefore the *Final Judgment* cannot be given till the Sheriff by a Jury, on a Writ of Inquiry has ascertained the Damages, which when they are assess'd by such Jury, that *Inquisition* is return'd; and upon such Return the Court gives *Final Judgment*, that the Party shall recover the Damages found by the Jury, and the Costs added thereto by the proper Officer of the Court by way of *Increase*, that he may suffer as little as possible in the Suit.

The Damages found by the Jury, cannot be increased by the Court, without the Request or Assent of the Plaintiff. *Latch* 177. *Good and Lawrence*, Mich. 2 Car. Roll 119.

And where that Request or Assent does not appear in the Entry of the Judgment, it is Error. 2 Cro. 587. *Sache and Yeoman*, the same Book, 415. *Machine's Case*.

And tho' it has been said, that the Court may mitigate as well as increase the Damages, I do not find any Instance of it; and the Law seems

seems to be otherwise in *Dyer* 105. where it Com-
was held, that tho' they might increase the mon-
Damages, yet they could not mitigate them; Pleas.
but there is no Doubt but, they may grant a
new Trial for excessive Damages, and many
Cases there are to warrant that to be Law.

In an Action upon the *Case or Trespass, &c.*
which consists of Damages, the Jury may find
less Damages than the Plaintiff lays in his
Declaration, but they cannot find more; if
they do, it is Error; for the Law presumes
that a Man knows his own Damages better
than any Body else can, and will lay the most
that he has sustained; but if the Jury gives
more Damages than the Plaintiff has declared,
for, if the Plaintiff Releases them upon the
same Record, all is then set right as it should
be. 10 Co. 115, 116, 117. *Pitfeld's Case.*

And you have a Case reported by *Latcb*
223. of *Hooper and Pope*, where the Court en-
creased the Damages found by the Jury,
where there was a very dangerous Mayhem,
upon View thereof, and the Oath of a Sur-
geon, that it was a Mayhem, tho' the *Decla-*
ration was generally for an Assault, Battery,
and wounding only; the same was done in the
Case of Mallet and Ferrers. 1 *Leon.* 139.

And it was said by the Court, in the *Case*
of *Angell and Shatterton*, 1 *Syd.* 108. that
where the Particulars of the Mayhem are not
expressed in the *Declaration*, the Court cannot
increase the Damages upon View of the May-
hem, unless the Judges of *Nisi Prius*, before
whom the Cause is tried, certifies the Parti-
culars of the Mayhem to the Court, or where
it is tried before one of the Judges of the same
Court, where the Judgment is to be given.

But there is an Anonymous Case in 1 *Ven-*
tris, where it was said, that the Court would

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not increase the Damages where the Word *Mayhemavit* was not set forth in the Declaration. *1 Vent.* 327.

As to the Conclusion of a Judgment with *Misericordia, &c.* nothing having before been said thereof, I think proper to mention somewhat as to that Particular.

This Word *Misericordia* signifies, that the Court have given Judgment against the Defendant, that the Plaintiff shall recover his Debt or Damages; but the Court having done with the Suit, and finished their judicial Authority, leave him entitled to Compassion; and *Bracton* gives a fine Description of this, to shew the Reason why the Defendant ought to be thus left by the Court entitled to Compassion, that is, not to be imprison'd, but only to be amerced. *Bracton* 106. b.

But these Amercements were antiently at the Discretion of the Lords, the Stewards, and Judges of the Courts-Baron, and Court-Leets; and finding that People were amerced sometimes unmercifully, therefore the Legislature by the Statute of 9 H. 3. cap. 14. *Provided that no Freeman should be amerced, but according to the Greatnes of the Offence, and that by his Peers;* and by that Statute, another's *Villain should be amerced, saving his Wainage, if he falls into our Mercy,* (says the Statute.)

And it appears by *Fleta*, Lib. 2. cap. 66. that when any Lord or Steward did amerce a Party without any *Compassion*, and not according to the Nature of his Offence, the Party was entitled to a Writ of *Moderata Misericordia*, whereby the Inferior Lords or Stewards were commanded, that they should not amerce the Defendant, contrary to the Tenor of *Magna Charta*; but I submit it, whether the Conclusion of the Judgment had not better be, that

the

the Defendant shall remain liable to be amerced; or if any Person should be fond of the Word *Misericordia*, then the Conclusion of the Entry may be, and the Defendant shall remain at the Mercy of our Sovereign Lord the King.

And this Form of the Entry of a Judgment by *Misericordia*, is in Contradistinction to a Judgment that was to be entred by *Capiatur*.

For in Actions of *Debt*, *Account*, Actions upon the *Case*, and several other Actions for Wrongs that were not directly in Breach of the King's Peace, or against any positive Statute Law, the Judgment was, that the Plaintiff should recover his *Debt* or *Demand*, or for that he had not accounted, or whatever else was the Judgment of the Court, he was to make Satisfaction, and there they left him only to be amerc'd.

But in Actions of *Trespass*, *Trespass*, *Assault* and *Imprisonment*, in Actions of *Deceipt*, and upon *Penal Statutes*, or for *Offences against Statute Laws*, the Court gave a more severe Judgment, that is, that, besides making Satisfaction to the Plaintiff, he should be taken and imprisoned till he paid the King a Fine for his Offence. And so where a Man pleaded, that a *Deed* declared upon, or that came out otherwise on the Pleadings, was not his *Deed*; there if it was found to be his *Deed*, the Judgment did not entitle him to Mercy, but the Judgment was *quod capiatur*, that he should be taken for the King's Fine, and imprison'd till he paid it.

And where a *Misericordia* was entred by the Plaintiff, instead of a *Capiatur*, tho' it was for the Benefit of the Defendant, yet it was *Error*. But by the Statute 4 & 5 of *W. & M. cap. 12*, this Fine is taken away, and the Judgments are entred in *Misericordia*, as in other Actions.

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ons. But because the Statute of *William* and *Mary* mentions only Trespass, Ejectment, Assault and false Imprisonment, yet a *Capiatur* should have been entred upon a *non est factum* pleaded, and found for the Plaintiff after this Act of Parliament, because that is *Causa omis-
sionis* out of the Act.

But by the Statute of the Amendment of the Law, of 4 & 5 *Annoe cap. 16.* which cures all Faults in *Judgments by Default*, as well as if they had been by *Verdict*, except the want of an *Original or Warrants of Attorney*; a *Capiatur* entred instead of *Misericordia*, and so vice *versa*, is not Error, because by 16 & 17 *Car. 2. cap. 8.* those Faults are cured after a *Verdict*.

A *Judgment in the Common Pleas* relates to the *Essoin-Day* of the Term, and shall be a *Judgment from* that Time, but a *Judgment in the King's-Bench* carries its Relation to the first Day of the Term only. *Cro. Car. 102. pl. 2.* the Case of *Stamford and Cooper*.

Therefore if a *Verdict* be of *Easter Term*, and before Judgment the Plaintiff dies, yet says my Lord Chief Justice *Holt*, this shall not obstruct the Entry of the Judgment; for as to the *Statute of Frauds and Perjuries*, that only requires the Time of signing the Judgment to be mark'd on the Roll, and that is only for the Benefit of Purchasers; for if Judgment be signed in the Vacation, yet it is entred as of the Term before, and none but a Purchaser shall be admitted to say it was sign'd at another Time; but it must be entred within two Terms after its being signed. *Duke of Norfolk's Case Farrely 30.*

So it was held in *Doctor Woodward's Case*, in the same Book 2. in *Par. the first of Queen Anne*, that if a Man gives a *Warrant of Attorney* in the *Vacation*, to give Judgment as of last

last Term, his Death does not determine the Com-
Warrant, because the Party was alive when mon
the Judgment is suppos'd to be given. Pleas.

But if a *Feme Sole* gives a *Warrant of Attorney*, and afterwards marries, that is a Revocation of the *Warrant of Attorney*, and Judgment cannot be entered up thereon, as reported in *Salk. 399* of *Pas.* the 9th of King *William* the Third, but in *M.* of King *William*, reported in the same Book, 400. the Court would not set aside such Judgment upon Motion, but left them to their *Writ of Error*.

By the *Statute of Frauds and Perjuries*, of 29 *Car. 2. cap. 3.* no Judgments shall bind Purchasers but from the Time of the signing, and the Time of signing must be mark'd on the Roll.

By 4 & 5 *W. & M.* the respective Clerks were to docquet Judgments, under the Penalty of one hundred Pounds.

And a Judgment not docqueted, is not to affect a Purchaser or Mortgagee, or to have any Preference against Heirs, Executors or Administrators; and this Act was made perpetual by the *Act of the 7th and 8th of King William the Third, cap. 26.*

There cannot be a Motion for a new Trial after a Motion in *Arrest of Judgment*, tho' there may be the Latter after the Former has been tried.

In the *King's-Bench* there must be four Days exclusive between the Day in Bank, and the Signing the Judgment, the Case of Clerk and Rowland; and in that Case it is said, that where the *Verdict or Inquest* is the last Day of the Term, tho' there can be no Motion in *Arrest of Judgment*, yet there may be a *Writ of Error*, and this Time is allowed for these Purposes; and therefore the Plaintiff ought to

Common Pleas. give a Rule, unless Cause be shewn to the contrary within four Days, and he is not to sign Judgment till the fifth Day. *Modern Cases in Law and Equity*, Martin and Henriques, 237. 5 Mod. 205.

A Judgment by Default is not to be impeached where the Party makes a Defence upon the Writ of *Inquiry*. *Mod. Cases in Law and Equity*, 289. *Patterson and Dyer*.

If Judgment be given upon *Terms*, the Court will take Notice of 'em if they are *precedent*, but otherwise if they are *subsequent*. *M. 10 W. 3. Salk. 400.*

Upon Payment of *Costs* the Court will set aside a Judgment by *Default*, tho' it be regularly signed, if the Plaintiff has not lost a Trial. *Mich. 2 Ann. 1 Salk. 402.*

Pat. 4 of Queen Anne. 'Tis said the Court will not refer a Judgment to the Master for Irregularity after a Writ of Error brought. *1 Salk. 402.*

If a Judgment for a Defendant be reversed in the *Exchequer-Chamber*, that Court shall give the new Judgment; but otherwise if on a *Demurrer*, because they cannot award a Writ of *Enquiry*. *1 Salk. 403.*

But if a Judgment be given in the *King's-Bench* by *Original* for the Defendant, and that Judgment is reversed in the *House of Lords*, they, and not the Court of *King's-Bench*, must give the new Judgment; for the Court of *King's-Bench* having given Judgment on the *Original*, have executed their Power. *ib.*

As hath been herein before-mentioned, where the Plaintiff or Defendant dies, after interlocutory Judgment, by the Statute of 8 and 9 of *K. W.* a *Scire Facias* may issue. But Care must be taken how you enter that Judgment, for in *Salk. 42.* in the Case of *Weston and*

and James, the Court were inclined to be of Com-
Opinion, that the Judgment should not be, mon
that the Plaintiff should recover against the Pleas.
Intestate, but against the Administrator.

And Note; where the Plaintiff, as Execu-
tor or Administrator, sues out such *Scire Facias*, the Defendant cannot plead to that *Scire Facias* Matter to avoid the Action, but only
in Arrest of the Judgment; because the Exe-
cutor or Administrator shall do no more to
the *Scire Facias* than the Testator or Intestate
could have done to the Judgment before.
Smith and Harnon, 1 Salk. 315.

An Action of Debt lies not in an inferior
Court, on a Judgment in *B. R. Cumb. 220*.

If *Trover* be brought against two, and *Judg-
ment* be for the Plaintiff as to one Defendant,
and for the other Defendant against the Plaintiff,
the Plaintiff cannot have *Judgment*.
Kiffen's Case. Cumb. 310.

One cannot move in *Arrest of Judgment*
before the *Possea* is brought into Court; and
in the *King's-Bench* the *Possea* is in the Hands
of the Plaintiff's Attorney, and therefore the
Defendant must move for a Rule to bring it
in; but in the *Common-Pleas* the *Attorise*
keeps it till the *four Days* in Court are ex-
pired for moving in *Arrest of Judgment*, and
he attends with it upon Notice, and a Fee of
6 s. 8 d. *Modern Cases 24. Wood and Shepherd.*
Mich. 10. Annæ.

If a Rule be for *Judgment* to stay till the
Court be further moved, and the Court is di-
vided, there needs no further Rule for *Judg-
ment*; but if it be upon an *Argument*, or a
Curia adiuvare vult, and the Court be divided,
there can be no *Judgment*. *Mod. Cases 202.*

But upon a Motion in *Arrest of Judgment*,
where the Court is divided, the Plaintiff must
have his *Judgment*. If

Common-Pleas.

If Judgment be not entered upon a Warrant of Attorney within the Year, it cannot be entered without Leave of the Court. *Mod. Cases 212.*

There is this Difference between the King's-Bench and Common-Pleas, in entering up Judgments in Debt: In the Common-Pleas, they say for a Debt of so much, and so much, for Damages occasioned by detaining the same. And in the King's-Bench, they say, as well for a Debt and Damages occasioned by detaining the same, as also for Expences and Costs, &c. *Mod. Cases 236.*

The having a Rule for Judgment gives no Power to enter up the Judgment in another Term, as of the Term in which the Rule was granted; but such Judgment was set aside. *Hedges and Temper B. R. & Mod. 191.* Note; there is no Rule in the Common-Pleas, but the Plaintiff's Attorney enters it without. *3 Salk. 212.*

The Entry of a Judgment for the Defendant after a Verdict, must be, *that the Plaintiff shall take nothing by his Writ, but for his false Claim shall be amerced, and that the Defendant shall be thereof for ever dismissed.* But if it be upon a Nonsuit, it is only, *for that the Plaintiff proceeds not on his Writ.* *4 Mod. 87, Walton and Smith.*

A Judgment in an inferior Court was reversed, because it was *Ideo concessum est per Curiam;* whereas it ought to have been *Ideo consideratum est.* *1 Cro. 319. 3 Bulst. 92, 3.*

And a Judgment was reversed because it was entered *Ideo consideratum ad eandem Curiam,* whereas it ought to have been *per eandem Curiam.* For it might be considered at the same Court; but it does not appear that it was the Act of the Court, and that it was

con-

considered at the same Court. *Hill.* 1649. See *Common Pleas.* likewise 1 *Saund.* 74. 1 *Cro.* 319.

When a *Judgment* is once executed, the *Goods* are in the *Custody* of the *Law*, and shall not be taken away by any *Exchequer Process*, or by *Commissioners of Bankrupts.* 3 *Mod.* 236.

Where there is a joint *Judgment* against two, and one dies before *Execution*, the *Scire Fasias* must be brought against the *Survivor*, and against the *Heir* and *Tertenant* of the *dead Man.* *Carthew* 107.

A *Judgment* is an entire *Thing*, and can not be reversed in *Part*, and affirmed in *Part.* *Carthew* 235. But otherwise if *Part* be by the *Common Law*, and *Part* by the *Statute.* 1 *Salkt* 24.

But where there are several distinct *Judgments* against one *Defendant*, one of those *Judgments* may be reversed as erroneous, and yet the other *Judgment* stand in *Force*; so where the *Damages* are several tho' the *Costs* are entire. *Hob.* 5.

Where it appears by the *Record* that the *Plaintiff* has no *Cause of Action*, the *Judgment* shall be arrested. 1 *Vent.* 310.

So where it appears that the *Money* demanded is not yet payable. 2 *Saund.* 107, 18. So for the *Uncertainty* of a *Verdict*, where it appears the *Jury* gave *Damages* for what was done after the *Action* brought. 2 *Saund.* 171.

Where a *Writ of Error* is brought upon a *Judgment* in the *Common Pleas*, for abating a *Writ* in a *real Action*, and that *Judgment* is reversed, the *Court of King's-Bench* must give such *Judgment* as the *Common-Pleas* ought to have given. 2 *Saund.* 256.

So the same is upon a *Writ of Error* of a *Judgment* in *Wales* or *Ireland.* 2 *Saund.* 257.

Judgme

Common
Pleas.

Judgment shall not be given for the Plaintiff, tho' the Plea be insufficient, if the *Repli-
cation* be insufficient, and thereby it appears,
that the Plaintiff has no Title. *Hob.* 14. 128.

Where the *Declaration* is good, and there is
a Fault in the Defendant's Plea, tho' the Plaintiff
hath joined Issue upon it, which is found
against him, yet the Plaintiff shall have Judgment
upon his good *Declaration*. *Cro. Car.* 25.

Tho' a Plea concludes with *petit judicium*,
omitting *dampna*, yet the Court shall give
Judgment for Damages as incident, but it is
ill on a *Demurrer*. *2 Lev.* 222, 345.

Judgment ought to be given *de bonis Testa-
toris* in Covenant, tho' the Breach be assigned
to be committed by Executors. *1 Saund.* 112.

If the Defendant moves in *Arrest of Judgment*, whereupon Judgment is stayed several
Terms, and then the Plaintiff dies, the Court
may give Judgment, *nunc pro tunc*, as of the
first Term when it was moved, *1 Syd.* 462.

If a final Judgment be entered without an
Interlocutory Judgment, it is Error. *Mod.
Cases* 7.

There is this Difference between a Judgment
in *Trespass* and a Judgment in *Debt*, a-
gainst several Persons, if one Judgment be for
one Defendant in *Debt*, *quod querens nil capiat
per breve, or per Billam*, that will avail the o-
ther Defendant, and the Plaintiff cannot have
Judgment against him; but in *Trespass*, if
one Defendant be acquitted, yet the Plaintiff
shall recover against the others. *1 Saund.* 217.

An erroneous Judgment may be pleaded by
an Executor; for an erroneous Judgment till
it is reversed, is a good Judgment. *Vaughan* 94.

A *Retraxit* entered before Judgment for
one of the Defendants, operates by way of
Release as to the rest; but if it be entered af-
ter

ter Judgment, it shall extend only to him for whom it is entered. 1 *Rolls Rep.* 233.

In *Trespass* against two, one pleads *specially*, the other *not guilty*; and a *Demurrer* is joined upon the *special Plea*, and Judgment be for the Plaintiff, and a *Writ of Enquiry of Damages* awarded; the Plaintiff may take his Judgment for the Damages, and relinquish his Action as to the Issue; but let him take Care that the Entry of the Judgment be before the Entry of relinquishing his Action.

2 *Rolls Abr.* 104.

If a Judgment be obtained, but the Plaintiff does not take out Execution within a Year and a Day, he must revive it by *Scire Facias* made out of Course; but if the Judgment be of seven Years standing, you must move for such *Scire Facias*; yet if the Plaintiff gets Executions made out and returned, and enters them upon a Roll, there needs no *Scire Facias*.

By the Course of the Court of *Common Pleas* now used, if the Plaintiff's Attorney gives a Rule to plead on *Monday*, he cannot sign Judgment 'till *Friday* in the Afternoon.

But if the Rule be given on *Friday*, he may sign Judgment on *Tuesday* in the Afternoon, having duly called for a Plea in Writing, so that *Sunday* is one of the Days.

But if a Rule be given to plead; and the Plaintiff's Attorney neglects to call for a Plea till after the Rules are out, the Defendant has till the Afternoon of the next Day to plead, (that is) the Defendant's Attorney cannot sign Judgment till the next Day in the Afternoon.

Some

Some few Observations on Executions.

THE usual Writs of Execution are either by *Fieri Facias* on the Goods and Chattels; and this Writ originally lay at *Common Law*, and was not given by the Statute of W. 2. as falsely alledged in *Jacob's Law-Dictionary*, describing a *Fieri Facias*, or by *Elegit*, whereby the Moiety of the Defendant's Lands are to be extended; or by a *Capias ad Satisfaciendum*.

The *Elegit* indeed was given us by the Statute of *Westminster* 2. cap. 18. And the *Capias* by the Statute of *Marlebridge*, cap. 23.

There may not be two Writs of Execution at one and the same Time subsisting; but if the Sheriff returns upon a *Fieri Facias*, that the Defendant hath no Goods, or but so many whereby he could not levy the whose Debt or Damages, the Plaintiff may have another *Fieri Facias* for the Residue, or he may have an *Elegit*, or he may have a *Capias* against his Body; but if he once takes the Body, (which in Law is deemed the greatest Satisfaction, except the Money recovered) he can neither have a *Fieri Facias* or *Elegit*.

But if a *Capias ad Satisfaciendum* be taken out, and the Plaintiff has no Effect of it; as if the Sheriff return a *Non est inventus*, tho' it is said in *Rolls Abr.* 904. that the Plaintiff may not have another Execution. The Law is otherwise, as in *Hob.* 57. in the Case of *Foster and Jackson*.

And *Hobart* held the Law clearly to be, that where the Party sues out an *Elegit*, and can have no Effect of it, he may resort to another Execution. *Hob.* 57.

If a Man died in Execution, his Executors ^{Com-}
were no further chargeable. Hob. 56, 7, 8, 9. ^{mon}
before the Statute of 21. Ja. 1. cap. 24. ^{get}
Pleas.

If upon an *Elegit* there are no Lands, but
only Goods, which are not enough, the Plain-
tiff may have a *Capias* for the Residue; for it
is in it's Effect but a *Fieri Facias*, tho' the Word
is *Elegit*. Hob. 58.

A *Fieri Facias* abates not by the Plaintiff's ^{Note,}
Death, but the Sheriff must go on to execute ^{this Case}
his Writ, Clerk and Withers. Mich. 13. Anne ^{is best re-}
Salk. 322. Hill. 10. George, Mod. ^{ported in}
Cases in Law and Equity, 225. ^{6 Mod.}

A Writ of Error is a Supersedeas from the ^{290.}
Time of the Allowance; but if the Writ of ^{1 Mod.}
Execution be once executed, it may be return-
ed. Salk. 322. *Perkins and Wollaster*. ^{188.}

If on a *Fieri Facias* all the Money is not le-
vied, the Writ must be returned before a se-
cond Execution can be made out, because the
second is grounded upon the Deficiency that
appears in the first. *Oviat and Vyner*, Salk.
318.

An Execution was taken out against a Per-
son in his Life-time, and executed on his
Goods after his Death, and held to be good
without a *Scire Facias*. *Mod. Cases in Law and*
Equity, 225.

It is a good Return to a *Fieri Facias*, for
the Sheriff to say he has levied the Goods,
and that they remain in his Hands for want
of Buyers; and if he continues in his Office,
you issue out a *Venditioni exponas*, and if he
does not do it, then a *Distringas* directed to
the Coroners to distrain the Sheriff to sell;
for by that Writ he is compellable to sell; if
he is out of his Office, you issue out a *Distrin-*
gas to the new Sheriff to distrain the old She-
riff to sell; whereby he is compellable under
the

Common
Pleas.

the Penalty of forfeiting Issues to the Value of the Goods. 6 Mod. 295, 296.

The Sheriff to execute a Writ of *Fieri Facias*, is not to break open the outer Door of the House; but if he does, the Execution, 'tis said, will be good, only the Sheriff will be liable to an Action of *Trespass*. 5 Co. 93. So 'tis said the Sheriff may not break open the House, nor pull the Latch, and open the Door, if it be shut, to execute a Writ of *Capias ad Satisfaciendum*; but if he does, and arrests the Party, the Arrest will be good; but the Sheriff may be punished for the Abuse of his Authority. Hob. 1. 5 Co. 91. Dy. 65, 214. But he may break open the inner Doors to execute his Execution. Cumb. 327. Palmer 53, 4.

It was said by *Pollexfen*, Chief Justice, in the Case of *Bealy and Sampson*, 2 Ven. 95. that the Sheriff cannot deliver the Defendant's Goods to the Plaintiff in Satisfaction, but they must be Sold, and there needs no Appraisement, as there must be upon an *Elegit*.

It was held in 2 *Saunders* 47. the Case of *Wilbraham and Snow*, that the Sheriff hath such a Property in the Goods taken in Execution, that he may maintain an Action of *Trespass* or *Trover* for them.

Where the Sheriff upon a *Fieri Facias* returns, that he had seized the Goods of such a Value, which was less than the Debt, and that they were recued, and that the Defendant had no other Goods, the Plaintiff cannot sue out an Execution for any more than for the Residue. 2 *Saund.* 544.

And where the Sheriff suffers Goods taken in Execution, return'd to be of such a Value, to be rescued out of his Hands, a *Scire Facias* lies for the Plaintiff to have Execution against him, according to that Value. 2 *Saund.* 544, 5.

A *Venditioni Exponas* cannot be awarded if it appears that the Goods are out of the Hands of the Sheriff. 2 *Saund.* 344. Com-
mon
Pleas.

Where you sue out a new *Fieri Facias*, or a *Testatum*, you cannot do it till the former is filed and returned, but you need not stay till the Appearance-Day of the Return for the Teste of the new *Fieri Facias*, but it may be tested on the Return-Day of the first Writ. *Jones* 200.

If he, who is Plaintiff in an Execution of Lands, releases one Acre of the Execution, all is extinct, because the Execution is entire.

1 *And.* 266.

On a *Fieri Facias* against one Partner, the Sheriff may take the Goods of both, and the Vendee shall have a Moiety in common with the other. *Cumberb.* 217. *Pope and Homan.*

Upon a *Fieri Facias* against an Administrator, the Sheriff may sell an Estate for the Life of another. *Cumberb.* 191. *Jibson and Street.*

A *Fieri Facias* can't be continued upon the Roll longer than a Year, without a new Writ. *Cumberb.* 346.

On a *Fieri Facias*, where the Party has two Gowns, the Sheriff may take one of them. *Cumberb.* 356.

An Execution once begun shall proceed if there be no Irregularity, and where the Party brings an *Audita Querela* on a Deed which is confess'd; tho' a *Supersedeas* be awarded, yet that shall not prevent the Sale of the Goods by the Sheriff. *Cumb.* 388, 389.

If the Sheriff has two *Elegits* against the same Person at one and the same Time, he may deliver a Moiety of his Land to one of them, and then to the other he is to deliver a Moiety of that which is left. 1 *Cro.* 482.

And

And upon an *Elegit*, the Sheriff ought to deliver Possession, by Meets and Bounds, or otherwise the Writ may be quashed. *1 Vent.*

259.

If two Executions are deliver'd to the Sheriff on the same Day, he is bound to give Preference to that which was first deliver'd; but if in Fact he executes that first which was last deliver'd, and makes a Sale of the Goods, the Vendee hath a good Title; and the Party that sued out the first Execution, is entitled to an Action against the Sheriff. *Cartbew 420; Smallcombe against Buckingham and others. Salk. 320.*

Where a Judgment is had against two, and one dies before Execution, the *Scire Facias* ought to be brought, as well against the Survivor, as against the Heir and Tertenants of the Deceased; and my Lord Chief Justice *Holt*, as 'tis reported, said, as this was a judicial Writ, it might be framed upon the subject Matter, and proposed the Form to be thus:

That the Writ should be against the Survivor, to shew Cause why the Plaintiff should not have Execution against him *de bonis & Catallis*, and of the Moiety of his Lands, and against the Heir, and Tertenants of the Deceased, to shew Cause, why the Plaintiff should not have Execution of the Moiety of the Lands of the Deceased, without mentioning the Goods. *Cartbew 107. Pantan and the Tertenants of Hall.*

A Prisoner is to be charg'd in Execution within two Terms after Judgment obtain'd. *Modern Cases in Law and Equity. 227, 256.*

A Writ of Error by two, and one dies pending the Writ, an Execution may be sued out without a *Scire Facias*. *Modern Cases in Law and*

and Equity, 108. 225. Penrice and Brace. Com-

It is said in the Case of *Shaw and Cutters*, mon-
1 Cro. 851. that where two are convicted, the Pleas,
Taking of one, and his Death, is no Discharge
of the other.

Upon fresh Pursuit of a Prisoner escaped,
the Sheriff may break open the House, and
if he arrests the Defendant looking-out of the
Window, he may break open the Door to take
him. *Palmer* 53.

Where the Sheriff permits the Defendant
to escape that is in Execution, by the Con-
sent of the Plaintiff, he shall never take him
again. 1 *Show.* 174.

By the Act of 21 *Ja. c.* 24. notwithstanding
the Party's dying in Execution, the Plaintiff
may have an Execution against his Lands,
Goods and Chattels.

By an Act of the 8th and 9th of King *Wil-*
liam the Third, cap. 27. if a Prisoner in Exe-
cution escapes, any Creditor, at whose Suit he
stands charged, may retake him by a new
Execution.

Before the Act of the 29th of *Charles*, the
Second, the Goods were bound at the *Teſte* of
the Writ, but by that Statute they are bound
only from the Time of the Delivery to the
Sheriff; but Lands are bound from the Day
of the Judgment.

*A Scire Facias upon a Judgment against an
Executor after a Year and a Day.**

GEORGE the Second, by the Grace of God,
of Great-Britain, France and Ireland, King, De-
fender of the Faith, and so forth, To the She-
riff of Norfolk, Greeting. Whereas *John Ad-*
seed, lately, (that is to say) in the Term of
St. Michael, in the fifth Year of our Reign, in
our

Common
Pleas.

our Court, before Sir Robert Eyre, Knt. and his Brethren, our Justices of the Common-Bench at Westminster, had recovered against Philip Barnsley, late of Dif's in your County, Hoster, as well a certain Debt of Eighty Pounds, as also fifty Shillings, which in our same Court were awarded to the said John for his Damages which he had sustained, by reason of detaining the said Debt, as by the Record and Proceedings thereof now remaining in our same Court, before our Justices at Westminster, may manifestly appear; nevertheless Execution of the said Judgment yet remains to be made, as we have receiv'd Information from the said John. And because we are willing that those things which are Just and Right should have a due Execution; therefore we command you, that by honest and lawful Men of your Bailiwick, you cause the said Philip to know, that he must be before our Justices at Westminster, on the Octave of St. Hillary, to shew if he has, or knows of any Cause, why the said John ought not to have an Execution against him for the said Debt and Damages, according to the Form and Effect of the said Recovery, if it shall seem Expedient for him so to do. And have you there the Names of those Persons by whom you shall so cause it to be known to him; and this Writ. Witness Sir Robert Eyre, Knt. at Westminster, the 28th Day of November, in the sixth Year of our Reign.

There is no Difference if it be in Case, only in stead of, as well a certain Debt of eighty Pounds, &c. you say eighty Pounds, which in our same Court, were awarded to the said John, for his Damages which he had sustained, by reason of several Promises made, and net

not perform'd by the said *Philip* to the said *John*, as by the Record, &c. as in the former, only afterwards where it is above-mentioned the said Debt and Damages; the Word *Debt* must be omitted, and only say, why the said *John* ought not to have an Execution for his said Damages, &c.

A Scire Facias against an Executor, upon a Judgment against the Testator.

— *GEORGE the Second, &c.* Whereas *Robert Gibbs, Esq;* lately in our Court of Common-Pleas, in the Term of *St. Hillary* in the fifth Year of our Reign, before *Sir Rob. Egre, Knt.* and his Brethren, our Justices of our Common-Bench at *Westminster*, by Consideration of the same Court, had recovered against *Edward Batwell late of London, Esq;* heretofore called *Edward Batwell of London Esq;* as well a certain *Debt of 80 l. as 6 l.* which in our same Court were awarded to the said *Robert*, for his *Damages* which he had sustained, by reason of detaining of the said *Debt* whereof the said *Edward* was convicted, as by the Record and Proceedings thereof now remaining here in our Court at *Westminster* aforesaid, may manifestly appear: Nevertheless Execution of the said Judgment remains yet to be made; and the said *Edward* is dead as we have received Information from the said *Robert*; and because we are willing that those Things that are Right and Just should be done, and should have a due Execution to be given thereon; therefore we Command you, that by honest and lawful Men of your *Bailiwick*, you cause *John Ratwell, Esq;* Executor of the said *Edward*, that he be here *in three Weeks from the Day of St. Michael*, to shew if he

he hath, or knows of any Cause, why the said *Robert* ought not to have Execution against him the said *John*, for the said Debt and Damages, of the Goods and Chattels which were of the said *Edward*, at the Time of his Death, in his Hands to be administred, if it shall seem Expedient to him so to do. And have you there the Names, &c. (as in the former.)

*A Scire Facias upon a Judgment in Ejectment
for the Plaintiff against the Defendant, who
entred into the Lands after the Death of the
Defendant in Ejectment.*

GEORGE the Second, &c. to the Sheriff of Middlesex, Greeting. Whereas *Edward Corbet*, lately, (that is to say) in *Easter Term*, in the 4th Year of our Reign, before Sir *Robert Eyre*, Knt. and his Brethren, our Justices, of our same Court at *Westminster*, by the Consideration of the said Court recovered his Term of and in three *Messuages*, with the Appurtenances, in the Parish of *St. Giles in the Fields*, in the County aforesaid, against *Humphrey Weld*, late of *London*, Esq; which *William Atwood*, on the first Day of *January*, in the third Year of our Reign, had demised to the said *Edward*, for him and his Assigns, to have and occupy the same, from the 25th Day of *December*, then last past, unto the full End and Term of five Years, from thence next following, and fully to be compleat and ended, which is not yet past. And for that the said *H.* drove out and removed the said *Edward* from his Possession, and ejected him out of his said Farm, and also eleven Pounds, which in our same Court were awarded to the said *Edward*, for his Damages which he had sustained by reason of the Premisses, whereof the said *Humphrey*

Humphrey is convicted, as by the Record and Proceedings thereof now remaining in our said Court may manifestly appear; Execution nevertheless of the said Judgment yet remains to be made: And the said Humphrey is dead, and one Nicholas Earl of Carlinford, and Mary his Wife have entred into the said Mes- suages, with the Appurtenances, and held the same, contrary to the Form of the said Recovery, as we have received Information from the said Edward. And because we are willing, that those Things, that are rightly done in our Court, should have a due Execution; therefore we Command you, that by honest and lawful Men of your Bailiwick, you cause it to be known to the said Earl of Carlinford, and Mary his Wife, that they must be here in fifteen Days from the Day of St. Martin, to shew Cause, if they have or know of any thing to say for themselves, why the said Edward should not have his Execution of the said Term unexpired, according to the Form of the said Recovery, if it shall seem to them Expedient so to do. Witness, &c. as in the former.

Adjudged by the Court, that this *Scire Facias* would lie according to the Case of *Jackson and Ford*, and others in *Hill. 11 W. 3.*

Scire Facias against the late Sheriff of Dorset, for not returning the Money levied by a Fieri Facias.

GEORGE the Second, &c. to the Sheriff of Dorsetshire, Greeting. Whereas we lately Commanded our late Sheriff of Dorset, that he should cause to be made of the Goods and Chattels of J. J. late of &c. otherwise called, &c. in his Bailiwick, as well a certain Debt of

Com-
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twenty Pounds, which *J. B.* here in our Court, before our Justices of the Common Pleas recovered against him; as also twenty Shillings which here in our same Court were awarded to the said *J.* for his Damages which he had sustained, by reason of detaining the said Debt, whereof the said *J. J.* is convicted; and that he should have the Money there on the Morrow of *All-Souls*, now last past, to render to the said *J. B.* for the Debt and Damages aforesaid, at which Day the said Sheriff return'd, that by Virtue of the said Writ, he had caused to be made of the Goods and Chattels of the said *J. J.* in his Bailiwick, the said Debt and Damages; and that he had there the Money to render for the said Debt and Damages: Nevertheless the said Sheriff had not there the Money to render to the said *J. B.* for the said Debt and Damages, according to the Form of the said Writ, as we have received Information from the said *James*. And because we are willing, that those Things, which are rightly done in our Court, should be brought into Execution, we command you, that by honest and lawful Men of your Bailiwick, you cause the said *Richard*, our late Sheriff of the said County of *Dorset*, to know, that he must be here in *fifteen Days from the Day of the Feast of Easter*, to shew if he knows of, or hath any thing to say for himself, why the said *James* should not have an Execution against him for the said Debt and Damages recovered by him the said *R.* in Form aforesaid, to be levied of the proper Goods and Chattels of the said *Richard*, (and then as in the former.)

A Scire

A Scire Facias upon a Recognizance against Bail
in the Common Pleas.

GEORGE the Second, &c. to the Sheriff of Middlesex, Greeting. Whereas *Sabrian Cole* of *Bishopsgate-street, London, Mercht.* lately, (that is to say) in the Term of the *Holy Trinity*, in the fifth Year of our Reign, in our Court of Common-Pleas, before Sir *Robert Eyre*, Knight, and his Brethren, our Justices of our said Court of Common-Pleas at *Westminster*, acknowledged himself to be indebted to *Thomas Sparks*, in the Sum of One Hundred and Twenty Pounds of lawful Money of *Great-Britain*, which said Sum of One Hundred and Twenty Pounds, the said *S. C.* for him and his Heirs, willed and granted to be made of his Goods and Chattels, to be levied to the Use and Behoof of the said *Thomas*, under this Condition, That if it should happen Judgment should be given for the said *T.* against the said *R.* in the same Court here, in a certain Plea of *Trespass upon the Case*, to the Damage of the said *Thomas* sixty Pounds, prosecuted by the said *T.* in the same Court here against the said *R.* then he the said *R.* should satisfie to the said *Thomas* all his Damages which should be awarded to him here in this Court, in the said Plea of *Trespass upon the Case*, or should render his Body in *Execution* of such Judgment, to our *Prison of the Fleet*: And altho' the said *Thomas* in the Term of *St. Michael*, in the said fifth Year of our Reign, in our same Court of Common-Pleas; before the said Sir *Robert Eyre*, Knt. and his Brethren, our Justices of the said Common-Pleas at *Westminster* aforesaid, by the Consideration of the same Court, recovered against the said *R.* Forty-six Pounds ten Shillings,

lings, which were awarded to the said *Thomas* now in our same Court, for his Damages which he had sustained by Reason of the said *Trespass upon the Case*, whereof he is convicted, as by the Record and Proceedings thereof now remaining in our same Court, may manifestly appear. Nevertheless the said *Richard* hath not made Satisfaction to the said *Thomas* for his said Damages, nor rendred his Body to our Prison of the Fleet, in Execution of such Judgment, according to the Form of the said Recognizance, as we have received Information from the said *Thomas*. And because we are willing that those Things, that are rightly done, should be brought to a due Execution, Therefore we command you (as in the former.)

A Scire Facias by Executors against Executors.

GEORGE the Second, &c. to the Sheriff of Middlesex, Greeting. Whereas *W. M.* Citizen and Mercer, &c. and *A. C.* Widow, Executors of the Testament of *R. S.* late Citizen, &c. lately called, *R. S. &c.* and *A. S.* his Wife, lately in our Court of Common-Pleas, (that is to say) in Michaelmas Term, in the fifth Year of our Reign, before Sir Robert Eyre, Knight, and his Brethren, our Justices of the said Court of Common-Pleas, by the Consideration of the same Court, had recovered against *J. M.* late of *S. &c.* Executor of the last Will and Testament of *J. M.* Gent. as well a certain Debt of forty Pounds, to be levied of the Goods and Chattels of the said *W.* as also forty Shillings which in our same Court were awarded to the said *W.* and *A.* for their Damages, which they had sustained by Reason of detaining the said Debt, to be levied of the Goods and Chattels of

of the said *W.* if he should have so many; and Com-
if not, then to be levied of the proper Goods mon-
and Chattels of the said *yo.* Whereof he is Pleas.
convicted, &c. as by the Record and Proceed-
ings thereof, here remaining in our said Court
of Common-Pleas, manifestly may appear :
Execution nevertheless of the Judgment
yet remains undone; and the said *A.* after the
said Judgment was so given, took to Husband
one *R. H.* as we have received Information
from the said *R.* and *Anne.* And because, (*as*
in the former.)

Of Proceedings by and against Attorneys.

Note; by the Statute in the third Year of
his present Majesty, cap. 6. no Attorney can
sue his Client for Business done for him till
one Month after the Delivery of his Bill.
And I submit it whether it is safe, That the
Teste of the *Attachment* be before the Bill de-
livered, for that is the Day by Construction
of Law, the Writ was sued out. And as that
is *quasi* an Original, the Defendant will be in-
titled to Oyer of it; and if it appears, that
the Teste of that Attachment be before the
Bill delivered, it was consequently before he
had a Right to bring his Action.

The Form of the Attachment is thus.

GEORGE the Second, &c. to the Sheriff of
Norfolk, Greeting. Attach *A. B.* and *C. D.* (*or*
as many as are in the Writ) so that you have
them before our Justices at Westminster, on
Monday next after the Octave of St. Hillary, to
answer to John Cock, Gentleman, one of the
Attorneys of our Court of Common-Bench, ac-
cording to the Liberties and Privileges of our

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Court, for such like Attornies of the same Bench, used and approved of in the same, for so long a Time as the Memory of Man is not to the contrary, of a Plea of *Trespass upon the Case*; And have you there this Writ. *Witness, &c.*

Note; all Proceedings for and against Attorneys must be returnable at a Day certain, (that is to say) on the Appearance-Day of every Return, *naming the Day*.

The Form of a Declaration for an Attorney is thus.

London. John Doe, late of London, Cutler, was attached by his Majesty's Writ of Privilege, issuing out of this Court, to answer to Matthew Isaack, Gentleman, one of the Attorneys of his said Majesty's Court of Common-Bench, according to the Liberties and Privileges of the said Bench, Time out of Mind used and approved of, of a Plea of Trespass upon the Case: And whereupon the said M. complains, That whereas, *So go on with the Declaration to the End, inserting underneath, in this Manner.*

*The Pledges for the John Doe,
Prosecution are Richard Roe.*

A Certiorari for an Attorney of this Court.

GEORGE the Second, &c, to the Mayor, Aldermen, and Sheriffs of London, Greeting. We command you, that you have before our Justices at Westmister, on Monday next after the Octave of St. Hillary, all, and all manner of Causes, Complaints and Demands, levied, sued out and depending before you or either of

of you, against *Matthew Isaack*, one of the *Common-Attornies* of our Court of *Common-Bench*, together with the Days of levying the same; so that our said Justices may upon viewing those Causes be able to do full and complete Justice to the said *Matthew Isaack*, according to the Liberties and Privileges for such Attornies, Time out of Mind used and approved of in our Court of *Common-Bench*; and have you there this Writ. *Witness*, &c.

The Form of a Supersedeas for an Attorney.

GEORGE the Second, &c. to our Justices assigned to hold Pleas before us. It having been made manifest unto us, on the Behalf of *Matthew Isaack*, one of the Attornies of our Court of *Common-Bench*, That whereas he is an Attorney of our said Bench, and is prosecuting and defending divers Affairs and Suits of many of our Liege People, as their Attorney of the same Bench; and the said *Matthew*, and all other Attornies of the said Bench, while they are so prosecuting and defending any Affairs in the said Bench, should, and ought to be under our Protection, according to the Liberties and Privileges of our said Court of *Common-Bench*, Time out of Mind there used and approved of: Nevertheless, *William Strickland*, Pedlar, not being ignorant of the Liberties and Privileges of our said Court of *Common-Bench*, sued out and prosecuted in our Court before us, a certain Bill for a Trespass committed by the said *Matthew* against the said *William Strickland*, as he asserted at *Rippon* in our County of *York*, in Contempt of our said Court of *Common-Bench*; and to the great Damage of the said *Matthew*, and several of our Liege People, whose Attorney

The Attorney's

ney he is, as we are informed. And therefore we command you, that you totally cease from proceeding upon whatsoever Plaints and Pleas are depending in our Court before you, against the said *Matthew*, (Pleas of Freehold, Felonies and Appeals only excepted) informing the Parties in the said Complaints and Pleas on our Behalf, that they may prosecute their Plaints and Pleas in our Court, before our Justices of the *Common-Bench*, if they think fit. *Witness*, &c.

A Writ of Privilege, for an Attorney of the Common-Pleas, being sued in the Mayor's Court of the City of London.

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GEORGE the Second, &c. to the Mayor, Aldermen, and Sheriffs of London, and every of them, Greeting. Whereas according to the Custom of our Court of *Common-Bench*, hitherto used and approved of, the Attorneys of our said Court of *Common-Bench*, ought not, nor have they for Times past been used to be compelled to answer before any of our Justices or Officers, or any other secular Judges whatsoever, except before our Justices of the said *Common-Bench*, upon any Pleas, Plaints or Demands which do not particularly relate to us, (Pleas of Freeholds, Felonies and Appeals excepted) And we have lately received Information, by the great Complaint of *Matthew Isaac*, one of the Attorneys of our said Court of *Common-Bench*, that several ill-disposed Persons, intending to disquiet the said *Matthew Isaac*, have impleaded him by divers Plaints levied in our Court before you, which do not relate to us; whereby he is unable to attend his said Office as an Attorney, upon several Affairs and Suits depending in our said Court of.

of *Common-Bench*; which if it is permitted, will manifestly take away, and be to the Deregation and Diminution of the Jurisdiction of our said Court of *Common-Bench*, and the Liberties and Privileges thereof. And because we are willing that the Jurisdiction, Privileges and Customs, for so long Time used and approved of in our said Court of *Common-Bench*, should be inviolably observed; *We command you*, and every of you, that you, and every of you desist from proceeding in all and singular the Plaints and Pleas whatsoever, depending in our Court, before you or either of you, against the said *Matthew Isaack*, by whatsoever Name he shall be therein reputed; (Pleas of Freeholds, Felonies and Appeals only excepted) altogether informing the said Parties, Plaintiffs in the said Complaints, that they may prosecute their said Complaints before our Justices of the said Court of *Common-Bench*, if they think it expedient for them so to do. *Witness*, &c.

Of Proceedings against Attornies.

THE Method of proceeding against an Attorney, is to draw the Declaration, and ingross it on a double Penny Stamp on Parchment, beginning and ending it in this Manner.

To our Justices of our Sovereign Lord the King of the Common-Bench.

Richard Williams, by *John Cock* his Attorney, complains of *Matthew Isaack*, one of the Attorneys of the Court of *Common-Bench* of our Sovereign Lord the King, present herein Court in his proper Person. For that whereas,

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so go on with the Declaration, to the Words, and whereupon the said Richard Williams declares he is injured and endamaged to the Value of forty Pounds. Adding the Words, And therefore he prays Relief, and so forth; instead of the Words, And therefore he brings this Suit, and so forth.

And the Reason of this Distinction is, because where there is a Declaration, there hath been a Suit before commenced by Proces, to which the Party hath appeared; but in this Case of a Bill filed against an Attorney, there is no Suit, but the Bill is only filed with an Intent to compel an Appearance, and what he prays therefore by his Bill, is only to be relieved in that Instance, and is not properly a Suit till there is an Appearance by the Attorney to the Bill.

The Method of proceeding therefore is, The Plaintiff's Attorney delivers this Bill to one of the Criers of the Court, who calls such Attorney by his Name, and solemnly proclaims aloud, that if such Attorney does not appear to such Bill, he will be forejudged. The Meaning of which forejudging is, that he will be struck out of the Roll of Attorneys; and when the Crier hath so called such an Attorney, the Bill is delivered to the Secondary, who gives a Rule thereupon, signifying, that if such an Attorney does not appear, he will stand forejudged; and then this Bill is to be carried to the Prothonotary's Office, and there filed and entred in a Book kept for that Purpose. And if the Attorney does not appear in four Days from the Rule given, then the Bill is entred upon a Roll of that Term, and carried to the Clerk of the Warrants and Instruments; and he thereupon strikes such Attorney out of the Roll.

Note;

Note; there must be Pledges added in this Manner.

The Pledges for the $\begin{cases} \text{John Doe,} \\ \text{Richard Roe.} \end{cases}$ Prosecution are

The Form of the Entry of which Forejudger is as follows.

You first enter the Bill with a Memorandum in this Form.

Be it remember'd, that on the 23d Day of October, this same Term, Richard Williams came here into this Court by John Cock his Attorney, and exhibited to the Justices of our Sovereign Lord the King, his Bill against Matthew Isaack, Gent. one of the Attornies of the Common-Bench of our Sovereign Lord the King present here in his proper Person, the Tenor of which Bill follows in these Words, (that is to say) to the Justices of our Sovereign Lord the King, Richard Williams, by John Cock his Attorney, complains of Matthew Isaack, one of the Attornies of the Common-Bench of our said Sovereign Lord the King, present here in Court in his proper Person; for that whereas, &c. and so go on with the Bill, ending with the Words, and thereon he prays Relief, and so forth. The Pledges for the Prosecution are John Doe, and Richard Roe, whereupon the said Matthew, being solemnly called, came not, therefore he stands forejudged from exercising his Office of Attorney of this Court, for his Contumacy, and so forth.

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*There is another Entry in Mich. 13 H. 7.
Roll 307. in this Form.*

Middlesex — Be it remember'd, that the eighth Day of November this same Term, one Rowland Brigg, one of the Attorneys of the Common-Bench, was solemnly called here by the Court, to appear and answer to certain Matters, Offences, and Impositions done by him, as it is said, and here in this Court charged upon, and objected against him. Therefore the said Rowland is for his Contumacy, forejudged from exercising his Office of Attorney of this Court, until, and so forth.

By which *and so forth*, is understood, until he shall come into this Court in his proper Person, and clear himself from the above-mentioned Offences and Impositions above charged upon him, and from his Contumacy in not appearing when he was solemnly called, as above-mentioned.

There is an Entry in Rastall 96. a. for the restoring an Attorney forejudged, upon his Payment of six Shillings and eight Pence; and his Offence was, for his appearing for the Defendant without a Warrant of Attorney; and the Form of that Entry is in this Manner, *viz.*

After the Words which constitute the Fore-judger the Entry begins.

Afterwards, (that is to say) on the 30th Day of October, in the 15th Year of the Reign of our Sovereign Lord the King, came the said *W. C.* in his proper Person, and having made Payment

Payment of his Fine of six Shillings and eight Pence to our Sovereign Lord the King, by mon reason of the Premisses, the same being this Pleas. Instant paid into this Court into the Hands of K. K. to buy a Chest, therein to put and keep the Rolls and Records of our Sovereign Lord the King; and that the said *W. C.* prays that he may be thereof freed and discharged; and hereupon the said *W. C.* at his special Instance and Request made to the Justices here, is again permitted and restored to exercise his said Office of an Attorney of the Common-Bench, and re-admitted to that Office.

Mich. 15 H. 7. Rastall 96. b.

And by this Forejudger is meant, that he stands unprivileged by the Court, and may be arrested as any other Person.

It is very proper here to observe the Method of an Attorney's being restored, which is, when the Attorney hath made Satisfaction to the Plaintiff, or if he appears, and will controvert the Suit, he must summon the Attorney for the Plaintiff before a Judge, to shew Cause why he should not be restored, and on their attending the Judge, if it appears to him, that the Plaintiff hath had Satisfaction, or the Matter in Dispute is such, as the Attorney may be admitted to controvert it, he will make an Order to the Clerk of the Warrants and Inrollments, to replace him in the proper Roll of Attornies, who does it without any Entry whatsoever. But if such Attorney be arrested by any other Person, and he pleads his Privilege, and the Plaintiff replies that he is forejudged, and is then be taken thereon, it is then proper, that this Entry be made, for his being forejudged is as much a Bar, and deprives

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deprives him of his Privilege, with Regard to others, as an Outlawry is a Bar for any other Person to take Advantage of, as well those that are Strangers, as those that are Parties to the Outlawry.

The Form of an Attachment against an Attorney.

GEORGE the Second, &c. to the Sheriff of London, Greeting. Attach Matthew Isaac, one of the Attorneys of our Court of Common-Bench, so that you have him before our Justices at Westminster, on Monday next after the Octave of St. Martin, to make answer to us, of and concerning those Things, which shall then on our Behalf be objected to him; and have you there this Writ. Witness Sir Robert Eyre, Knt. the 28th Day of November, in the 6th Year of our Reign.

And the Reason why an Attachment is not to appear and make Answer to the Plaintiff in the Cause, upon whose Application such Attachment was granted, but to answer to us, which is to our Sovereign Lord the King, is, because it is for a Contempt of the Court of Justice; and the King being supposed by Law, to be the Fountain, from which all Justice flows, therefore he must answer the Contempt to him; and the Fine which is imposed for such Contempt is the King's, and to be executed into his Exchequer.

And no Rule is absolutely granted for an Attachment, but upon personal Service of the first Rule; therefore the Words of the Rule always were *super Notitiam hujus Regule sibi dimidam.*

When an Attorney is thus taken on an Attachment, he gives a Bail-Bond to the Sheriff, and

and at the Return of the Writ personally appears in Court, and then enters into a Recognizance to appear from Day to Day, till the Pleas. Court shall determine concerning the Matters objected against him. And then upon Motion by his Counsel, the Court makes a Rule, that unless his Adversary exhibits Interrogatories against him in four Days from such Rule, he shall be discharged.

These Interrogatories must be filed with the Secondary of that Office where the Cause is, and after such Attorney hath been sworn before a Judge to swear the Truth, he is examined by the Secondary, and the Tenor of his Examination is drawn by the Secondary; and thereupon, if the Prothonotary makes a Report that he is in Contempt, the Court commits him to the Fleet; or if he is reported Innocent, they discharge him. If he neglects to appear to be examined, or neglects attending the Court when he is directed to come, the Court will order his Recognizance to be estreated.

And Note; if he confesses any Thing material in his Depositions, there is no Occasion for Witnesses, but you move on his Confession.

The Entry of a Non Pros, after Appearance by the Defendant for want of a Declaration.

Devon. A. B. who sued out his Majesty's Writ against C. D. late of Southmpton, in the County of Devon, of a Plea of *Repass on the Case*, doth not prosecute the same; Therefore it is consider'd by this Court, that he and his Pledges of prosecuting are to be amerced; the Names of the Plaintiff's Pledges are John Doe, and Richard Roe; and the said C. is to be therefrom for ever dismissed. It is also consider'd,

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sider'd, that the said *C.* ought to recover a
gainst the said *A.* his Damages occasion'd by
the Premisses, which by the Discretion of the
Justices of this Court, according to the Form
of the Statute in that Case made and provided,
are awarded to the said *C.* at his Request to
forty Pounds, for his Expences and Costs su-
stained by him in defending this Suit, and so
forth.

A Commitment to the Fleet after Judgment.

And the said (Defendant) shall remain at
the Mercy of our Sovereign Lord the King,
and be liable to Amercements. Afterwards,
(that is to say) on the 23d Day of January, in
the sixth Year of the Reign of our Sovereign
Lord George the Second, King of Great-Britain,
France and Ireland, Defender of the Faith, and
so forth, comes here into this Court in his
proper Person; and hereupon the said (De-
fendant) is committed to his said Majesty's
Prison of the Fleet, by reason of the Premis-
ses, there to remain till he shall from thence be
discharged in due Form of Law.

Another in Discharge of Bail.

Afterwards, (that is to say) on the 23d Day
of January, then next following, the said (De-
fendant) comes here into this Court in his
own proper Person, and as well for his own
Indemnity, as in Discharge of his said Bail,
he is by this Court committed to his Majesty's
Prison of the Fleet, by reason of the said Judg-
ment, there to remain till he shall be from
thence discharged in due Form of Law; that
they the said Bail may be discharged from
their said Recognizance. Whereupon the said

W.

W. present here in this Court, in his own proper Person, at the Request of the said (Plaintiff) is committed to the said Prison in Execution for the said Debt and Damages, recovered in the Manner as above set forth, there to remain until he shall from thence be discharged in due Form of Law; and the said Bail, (that is to say) P. S. and W. R. are by this Court entirely discharg'd from their said Recognizance in this Suit.

Of Proceedings by and against Infants.

An Infant is to prosecute a Suit by his Guardian, or best Friend, tho' the Term used is *Prochain-Ami*, which is next Friend, but he cannot deny by such next Friend, but must defend only by Guardian, because the Law supposes, that where he demands or sues for any thing, it is for his Benefit. And therefore the Law is not so watchful in that Case of the Person to take care of his Suit, as where he is to be defended, where he may sustain a Loss; for the Law is so careful, lest there should be any Prejudice done to the Infant, that it will not suffer any Person but a Guardian to defend for him, who may be called to an Account by the Infant, for his Management and Behaviour therein.

And in this there is this Difference, where an Infant brings an Action in his own Right, and where in the Right and for the Benefit of another; for if he sues in another's Right as Executor or Administrator, it shall never be assign'd for Error, because it is supposed for his Benefit, however that he can have no Loss thereby but if in that Case Judgment be given against him, he himself may assign his suing by Attorney for Error,

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Error, because of the personal Prejudice he receives thereby.

Yet if an Infant be join'd with others, in suing in the Right of another, the Action may be brought by Attorney, for they all make but one Person in Law. 3 Cro. 377.

But in all Cases where an Infant is Defendant, tho' it be in another's Right, and tho' join'd with others, he must sue by Guardian.

The Form of an Admision in Court of a next Friend is thus.

London. It is granted here by this Court, that A. B. Gentleman, and C. D. Gentleman, do jointly and severally prosecute, and sue for, and in the Behalf of E. F. who is within Age, as his next Friends, against G. H. of a Plea of Debt, as the Case is.

The Form of an Admision by Guardian.

Devon. J. E. who is within the Age of twenty-one Years, is admitted by the Court of our Sovereign Lord the King, before the King himself, by T. W. his Guardian, to defend all, and all Manner of Suits, Action and Actions depending in the same Court.

R. Price.

Which is signed by the Judge,

"Tis Time enough to admit such Friend, Guardian or Guardians, any Time before the Declaration delivered, unless it be by special Original; but it must be before the Declaration delivered, because it must take Notice thereof thus.

Suffolk

Suffolk G. H. late of St. Edmunds-Eury in the County of Suffolk, Woollen-Draper, was to answer to *E. T.* of a Plea of Trespass on the Case. And whereupon the said *E. T.* by *A. B.* (who is admitted by this Court to prosecute for the said *E. T.* who is within Age), as the next Friend to the said *E. T.* declares, that whereas,

Admission of an Infant may also be by Commissioners, by Virtue of a *Dedimus* from the Cursitor of the County, and which when returned must be filed with the Cursitor, who makes you a *Mittimus* and *Transcript* thereof, which you enter on the Roll; 'Tis also said, he may be admitted by a Judge at the Assizes.

Which *Dedimus potestatem ut supra*, is for the Commissioners to admit him *custodes* to answer the Plaintiff in the Action brought against him, as in the Declaration; and the Caption thereupon is to be written on Parchment thus, (*viz.*) By Virtue of his Majesty's Writ hereto annexed, directed to us, and *W. S. H. K.* and *S. A.*

We whose Names are hereunto subscribed, on the first Day of December, in the fifth Year of the Reign of his said present Majesty, have admitted *R. G.* and *H. L.* to be Guardians to the said *T.* named in the said Writ, (being within Age) to defend a Suit which is now depending in his Majesty's Court of Common-Pleas, of a Plea of Trespass on the Case, (as it is said) according to the Tenor of the said Writ; in Testimony of which Matter we have hereunto set our Seals the Day and Year above; the Execution of which Commission appears in a Schedule hereunto annexed. Subscribing the Names of those that executed it.

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The *Mittimus* and *Transcript* must be entered next on the Roll, thus, *Our Sovereign Lord the King sent here to his Justices of the Court of Common-Pleas his missionaly Writ under Seal, together with the Tenour of a certain Writ of Giving Authority to admit a Guardian*: And the Return of the same, and the Admission of the said Guardian thereupon are in these Words following, (that is to say) *GEORGE the Second, &c.* so go on to the End of the *Mittimus* and *Transcript*, quite to the Caption (*ut supra*) with the Commissioners Names.

A Plea by a Guardian runs thus.

And the said *A. B.* by *C. B.* who is admitted by this his said Majesty's Court, to defend for the said *F.* who is within Age, as his *Guardian*, comes and defends the Force and Injury, &c.

Precedents of Writs of *Habeas Corpus*, *Procedendo*, *Certiorari*, and *Supersedeas*.

A *Habeas Corpus* to the *Sheriff's of London*.

GEORGE the Second, &c. To the Mayor, Aldermen and Sheriff's of our City of London, Greeting: We command you and every of you, that ye have before our Justices at Westminster, (if returnable immediately, then you say) immediately after the Receipt of this Writ, (if it be returnable before the Lord Chief Justice, or another of the Judges at his Chambers, you say) before Sir Robert Eyre, Knight,

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our Chief Justice, (or Alexander Denton, Esquire, one of our Justices) of our Court of Common-Pleas, at his Chambers, situate in Serjeants-Inn, in Chancery-Lane, the Body of C. D. who is laid to be detained in our Prison, under your Custody, by whatsoever Name he shall be reputed in the same, together with the Day and Cause of taking and detaining the said C. D. to do and receive that which our Court shall consider of in this Case. And have you there this Writ. Witness Sir Robert Eyre, Knight, the Twenty-third Day of January, in the sixth Year of our Reign.

If it be returnable at a general Return, then you say, As the Return is, on the Octave of the Purification of the Blessed Virgin Mary, &c.

If it is to be directed to the Judges of the Marshal's Court, you say,

To the Judges of the Court of our Palace at Westminster, and every of them, Greeting. We command you that ye have, &c.

If it be after a *Cepi Corpus*, then you say,

GEORGE the Second, &c. to the Sheriff of Norfolk, Greeting. We command you, that you have before our Justices at Westminster, on the Octave of the Purification of the Blessed Virgin Mary, the Body of C. D. whom you took by Virtue of our Precept, and now detain in your Custody, as you yourself have returned to our Justices at Westminster, on the Octave of Saint Hillary last past, to answer to A. B. of a Plea, that he render to him twenty Pounds, which he owes to and unjustly detains from him, (as it is said) and have you there this Writ. Witness, &c. A

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A Procedendo to the Judges of the Marshal's Court.

GEORGE the Second, &c. To the Judges of our Palace Court at Westminster, and every of them, Greeting. Whereas by our Writ we lately commanded you, that ye should have before Sir Robert Eyre, Knight, our Chief Justice of our Court of Common-Pleas, at his Chambers, situate in Serjeants-Inn in Chancery-Lane, London, immediately after the Receipt of that Writ, the Body of A. B. who is said to be detained in our Prison, under your Custody, together with the Day and Cause of taking and detaining him, by whatsoever Name the said A. should be reputed in the same, to do and receive, what our said Chief Justice should consider of in that Particular. Nevertheless for certain Reasons specially moving the said Justices of our said Court of Common-Pleas at Westminster, in this Particular, we command you and every of you, notwithstanding any Writ lately directed to you to the contrary, that according to the Laws and Customs of our Kingdom of Great-Britain, and of your Court, you proceed with Effect in whatsoever Pleas and Plaints are now levied or depending in our Court before you, against the said A. B. Witness Sir Robert Eyre, Knight, &c.

Some of the Forms have been thus, after the Words to do and receive that which our Chief Justice should consider of in this Case; then the Entries have been in this Manner:

Nevertheless because it appeared to our Justices of our said Court of Common-Pleas at Westminster, that the said A. does not in due Manner

Manner prosecute his Writ, to have the Body, together with the Cause of taking and detaining him, at the Day and Place aforesaid. Therefore we command you, that according to the Laws and Customs of Great-Britain, and of your Court, you proceed in all and every the Pleas and Plaints levied or depending in our Court, before you and every of you, notwithstanding any Writ lately directed to you, to have the Body in the Manner aforesaid, Witness, &c.

If your *Habeas Corpus* was returnable in Court, upon which your *Procedendo* issued, the only Difference is, that you say, *Whereas we lately commanded you, that you should have before our Justices at Westminster, (on such a Return) the Body of A. B. who is laid to be detained in our Prison, under your Custody, by whatsoever Name he should be reputed in the same, together with the Day and Cause of taking and detaining him, to do and receive that which our said Justices should consider of in that Behalf.* Nevertheless for certain Reasons specially moving our said Justices at Westminster in this Particular, (*and then as in the former.*)

A Certiorari to the Mayor, Aldermen, and Sheriffs of London.

GEORGE the Second, &c. to the Mayor, Aldermen, and Sheriffs of London, Greeting. We being desirous for certain Reasons, that there should be certified a certain *Plaint*, levied or exhibited before you or some of you, against C. D. late of Breadstreet, London, at the Suit of A. B. in a Plea of *Trespass on the Case*; therefore we command you, that you send to our Justices at Westminster, on the Octave of Saint

Com-
mon
Pleas.

Saint Hillary, the said *Plaint*, together with all Things relating to the same, in as full and ample Manner as the same now remains before you, or either of you, by whatsoever Name the Parties shall be reputed in the same, together with this *Writ*; so that our said Justices may further cause to be done therein what shall appear to them to be right and just. Witness Sir *Robert Eyre*, &c.

If it be to remove an Attachment, then it is thus.

GEORGE the Second, &c. to the Mayor, Aldermen, and Sheriffs of the City of London, Greeting. We being desirous for certain Reasons, that there should be certified, as well what original Bills and *Plaints* are levied or affirmed, before you or any of you, against *Henry Hinde*, Citizen and *Turner* of your said City, at the Suit of *Thomas Lee*, in an *Action of Debt*, as also all *Attachments* made thereon, of the Money, Goods and Chattels of the said *H. Hinde*, in the Hands or Custody of the said *Thomas Lee*, or of any other Person or Persons whatsoever, levied or affirmed before you, or any of you; We command you, that you certify the said *Plaints* and *Attachments*, with every Thing relating thereto, to our Justices at *Westminster*, on the Morrow of the *Purification of the Blessed Virgin Mary*, in as full and ample Manner as the same now remains in our Court before you, that our said Justices may cause to be further done therein, that which shall appear to them to be right and just. Witness Sir *Robert Eyre*, &c.

A Supersedeas on a Habeas Corpus, for that it was clandestinely sued out.

GEORGE the Second, &c. Whereas we lately commanded you by our *Writ*, that you should

should have *A. B.* being in our Prison, under your Custody, together with the Day and mon Cause of taking and detaining him, before our Pleas.

Justices at *Westminster*, on the Octave of *St. Hillary* last past, to do and receive that which our Court should consider of in that Case. And because it appears to our Justices at *Westminster*, that the said Writ to have the Body was sued out clandestinely: Therefore we command you, that you altogether forbear molesting the said *A.* by Reason of the Premises, or in any Manner executing the said Writ, or returning the same before our Justices at *Westminster*. Witness Sir *Robert Eyre*, &c.

A Supersedeas because a Capias ad Satisfaciendum was erroneously sued out.

GEORGE the Second, &c. to the Sheriff of *Middlesex*, Greeting. Whereas we lately commanded you by our Writ, that you should take *A. B.* late of *Westminster*, in your County, *Hosier*, if he should be found in your Bailiwick, and safely keep him, so that you might have his Body before our Justices at *Westminster*, within fifteen Days after the Day of *St. Martin* then to come, to make Satisfaction to *C. D.* for twenty Pounds, which in our same Court, before our Justices at *Westminster*, were awarded to the said *C. D.* for his Damages which he had sustained, by reason of not performing certain Promises and Undertakings made by the said *A.* to the said *C.* at *Westminster*, in your said County whereof he is convicted; and because it sufficiently appears to our said Justices, that our Writ to take his Body to make Satisfaction was unduly and erroneously sued out of our said Court; there-

Common-
sore we command you, that you altogether
forbear taking, or any ways molesting the said
Pleas. *A.* by reason of the Premisses, or in any man-
ner executing the said Writ, or making a Re-
turn thereof to our said Justices at *Westmin-
ster*; and if you shall have taken the said *A.*
upon that, and no other Occasion, then Dis-
charge him, and permit him to go at large.
Witness Sir *Robert Eyre*, &c.

A Supersedeas on an Outlawry.

GEORGE the Second, &c. to the Sheriffs of
London, Greeting. Whereas we lately com-
manded you, that you should not omit, by
reason of any Liberty in your County, to take
H. Hinde, late of *Breadstreet London*, *Turner*,
(*outlaw'd in London, on the twenty-second Day*
of September, in the sixth Year of our Reign,
at the Suit of William Martin, in a Plea of
Debt) if he was to be found in your Bailiwick,
and that you should safely keep him, so that
you might have his Body before our Justices
at *Westminster*, at a certain Day now past, to
do and receive, that which our Court should
then and there consider of in that Particular;
and because it sufficiently appears to our Ju-
stices at *Westminster* of Record, that the said
Outlawry, pronounced and obtained against
the said *H. Hind*, is altogether Void, and of
none Effect in Law; therefore we command
you, that you altogether forbear taking, ar-
resting, imprisoning, or in any wise further
molesting the said *H. Hind*, by reason of the
said *Outlawry*; and if upon that and no other
Occasion, you have taken and imprisoned the
said *H. Hind*, then permit him to go at large
(*or discharge him*) under the Penalty attend-
ing the Neglect thereof. Witness Sir *Robert*
Eyre, &c.

A Super-

**A Supersedeas on a Capias, the Defendant
having put in Bail.**

GEORGE the Second, &c. to the Sheriff of Middlesex, Greeting. Whereas by our Writ we lately commanded you, that you should take Thomas Barber, late of Westminster in your County, if he was to be found in your Bailiwick, and safely keep him so, that you might have his Body before our Justices at Westminster, at a certain Day then approaching, to answer to R. Spark, in an Action of Trespass on the Case, upon Promises made by the said T. to the said R. at Westminster aforesaid; and because the said Thomas appeared in our Court, before our Justices at Westminster, at the Day and Place contained in our said Writ, to answer to the said R. according to the Form and Effect thereof; therefore we command you, that you altogether forbear taking, attaching, imprisoning, or further molesting the said Thomas on that Occasion; and if you have taken him on that, and no other Occasion, then without Delay, cause him to be discharged from the Prison in which he is so detained, under the Penalty attending the Neglect thereof. Witness Sir Robert Eyre, &c.

I do not think it proper to make a useless Repetition of the Form of a Declaration in Ejectment, there being one in the Proceedings of the King's-Bench, which when it is by Original, is the same as in the Common-Pleas, and shall therefore here only insert a Translation of the Common Rule in Ejectment, which varies somewhat from that in the King's-Bench.

Common
Pleas.

Hillary Term, the Fifth of King George
the Second.

Denn a-
gainst
Fenn, of
one Mes-
suage, one
Barn,
one Sta-
ble, and
ten Acres
of Land
in the
Parish of
Thet-
ford, in
the Coun-
try afore-
said.

Norfolk. It is ordered by the Consent of Robert Martin the Plaintiff's Attorney, and John Cock Attorney for A. B. who claims a Title to the Tenements in Question, that the said A. B. be admitted Defendant, and that the said A. shall immediately appear by his said Attorney, who shall receive a Declaration, and plead thereto the General Issue this Term; and that the said A. at the Trial thereupon to be had, shall appear in his proper Person, either by his Counsel or Attorney, and acknowledge Lease, Entry, and actual Ouster, of such of the Tenements specified in the said Declaration, as are in the Possession of the said Defendant, or his Under-Tenant, or any Person claiming by, or under his Title thereto, or that in Default thereof, Judgment shall be entred against the said Defendant as the casual Ejection; but the Proceedings to stay against him until there be a Default in some of the Premisses; and by the like Consent it is order'd, that if by Reason of such Default the Plaintiff becomes noniuitud upon the Trial, the said A. shall take no Advantage thereof, but shall pay Costs for the same to the said Plaintiff, to be taxed by the Prothonotary. And it is further ordered, that the Lessor of the Plaintiff be chargeable with the Payment of such Costs, as shall be allowed and awarded by this Court to the said A. in any manner howsoever.

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A Postea for the Plaintiff, on a Record tried, either at the Sittings in London or Middlesex, where Part is found for the Plaintiff, and Part for the Defendant.

Afterwards, (that is to say) on the Day, and at the Place within contained, came as well the within named A. B. as the within written C. D. by their Attornies within mentioned, before Robert Lord Raymond, the Chief Justice within-written, and John Smith, Gent. (he being associated to the said Chief Justice by Force of the Statute in that Case made and provided) and the Jurors of the Jury, whereof mention is made in the within-written Record, being summon'd likewise came, and being ballottted, tried, and sworn to declare the Truth of the Issue within contained, as to the third Promise and Undertaking mentioned in the within Declaration, declare upon their Oath, that the said C. D. did ~~undertake~~ in such Manner and Form as the said A. B. hath within declared against him, and do ~~affeſſ~~ the Damages of the said A. occasioned by not performing the said third Promise and Undertaking, besides his Expences and Costs, laid out by him, about his Suit in this Particular to fifty Pounds, and for his Expences and Costs to forty Shillings; and as to the first, second, and fourth Promises and Undertakings, in the within-written Declaration mentioned, the said Jurors further declare upon their Oath, that the said D. did not undertake in such Manner and Form, as the said A. hath within declared against him, therefore it is considered by the Court of our said Sovereign Lord.

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Lord the King, here before the King himself that the said A. B. should recover against the said C. D. the said Damages assedled by the said Jury in the Manner as above ; and also fourteen Pounds for his Damages and Costs awarded by this Court of our said Sovereign Lord the King to the said A. with his Consent by way of Increase, which said Damages, Expences and Costs amount in the Whole to sixty-four Pounds, and the said C. shall remain at the Mercy of our Sovereign Lord the King liable to be amerced. It is also consider'd, that the said A. as to the said first, second, and fourth Promises, should be at the Mercy of our Sovereign Lord the King, and liable to be amerced for his false Claim thereof against the said C. and the said C. as to the said first, second, and fourth Promises is thereof acquitted, and thereof dismissed the Court.

*If the Postea be on a Trial at the Assizes, then
this is the proper Entry.*

Afterwards, (that is to say) on the Day, and at the Place within contained, as well the within named A. B. as the within written C. D. by their Attornies within contained, came before Sir Robert Eyre, Knt. his Majesty's Chief Justice of his Court of Common-Pleas, and Roger Jennyns, Esq; (associated for this particular Purpose) to the said Sir Robert Eyre, and Alexander Denton, Esq; another of his Majesty's Justices of his said Court of Common-Pleas, appointed to hold the Assizes in the County of Norfolk, by Vertue of his Majesty's Writ, directing the Assizes to be held before any two of the Persons therein named, if all therein should not come there, (the Presence of the said Alexander Denton not being expected)

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ed) and the Jury being summoned, and balloted, according to the Form of the Statute Bench, in such Case made and provided, and tried and sworn to declare the Truth of what is within contained, declare upon their Oath, that the *Writing Obligatory* in the Plaintiff's Declaration within mentioned, is the Deed of the said C. as the said A. hath within declared against him, and they assess the Damages of the said A. on that Occasion, besides his Expences and Costs by him laid out about his Suit in this Cause, to one Shilling, and for his Expences and Costs, to fifty-three Shillings and four Pence. *Therefore it is consider'd*, that the said A. should recover against the said C. D. his said Debt, and the Damages assessed by the said Jury by reason of detaining the same, and fourteen Pounds for his Expences and Costs awarded by this Court to the said A. with his Consent, by way of *Increase*; which said Damages in the Whole amount to sixteen Pounds fourteen Shillings and four Pence, and the said C. shall therefore remain at the Mercy of our Sovereign Lord the King, liable to be amerced.

If before the *Act of Parliament* of the Third of his present Majesty's Reign, for regulating Juries, there were not Jurors enough appeared of the Persons that were mentioned in the Panel annexed to the *Habeas Corpora* or *Distringas*, then that deficient Number, which was usually called a *Tales*, (that is) Persons that are so far such, as are in the Panel, that they were to be of that County, and qualified with all the necessary Requisites; as that they were to be in no wise related, either to the Plaintiff or Defendant, (and who had ten Pounds a Year in Lands, Tenements or Rents) were before the said late *Act* granted by the Court

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Court to be taken *de Circumstantibus*, (that is) of Persons standing by, and attending about the Court, and to be impanelled with the rest that did appear; but by that Act, the Jury now are to be taken out of forty-eight, so that there is not likely to be any *tales de Circumstantibus*, as was usual before; therefore as that is the Case, and as we have a Maxim in the Law, *cessanti Causa, cessat effectus*, the Fee of two Shillings, which the Marshal, Sheriff and Cryer used to take for such *Tales*, is now abolished; yet I do not apprehend, that the Act has totally taken away from the Court the Power of granting a *Tales*; but should it ever happen to be the Case, by reason of any Sicknes or otherwise, that twelve Jurors should not come out of the forty-eight, or by reason of Challenges, they should be reduc'd to a deficient Number, in that Case the Court I believe may yet grant a *Tales*; and wherever that is the Case, I submit this Entry to the Consideration of the Practisers.

In the Postea of a Record tried in London or Middlesex, after the Words according to the Form of the Statute in that Case made and provided, and in a Postea of a Record tried at the Assizes, after the Words the Presence of the said Alexander Denton not being expected, you must go onibus; and the Jurors of the said Jury being summoned, some of them, (that is to say) E. F. G. H. so recite as many of the Jurors of the said Jury as appeared, came, and being ballotted, according to the Form of the Statute in that Case made and provided, are sworn upon the Jury; and because the rest of the said Jurors have not appeared, therefore others of the Persons standing by the Court, are at the Request of the Plaintiff, and by the Command of the said Justice, elected

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lected by the Sheriff of the said County, and King's newly added, the Names of which are affiled Bench, in the Panel underwritten, according to the Form of the Statute in such Case made and provided; which said Jury newly added, (that is to say,) *I. K. L. M. N. O.* (reciting the rest that were added to the Former, to make up the Number twelve) likewise came, who being elected, tried and sworn, together with the said other Jurors, before ballotted, impanelled and sworn to declare the Truth of what is within contained, say upon their Oath, &c. as the Verdict is.

And I submit it, whether as this Act appoints a Number not less than 48, or more than 72 to be returned on every *Venire*; whether the Form of the *Venire*, as well as the Award thereof should not now be altered to make them consonant to the Nature of the Thing intended by them; and therefore whether the *Venire* should not now be thus:

We command you, that you cause to come before us at *Westminster*, on *Thursday next after three Weeks from the Holy Trinity*, a Number, and not less than 48, or exceeding 72, of free and lawful Men of the Body of your County; out of which twelve may be ballotted, according to the Form of the Statute in such Case made and provided, every one of which to have ten Pounds a Year in Lands, Tenements, or Rents, at least. And then go on as in the *Venire* herein before inserted, and the Award to be thus:

Therefore let a Number not less than 48, or exceeding 72, of Persons of the said Court, come before our Sovereign Lord the King,

at

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at *Westminster*, (on the Day of the Return of the Venire) out of which twelve may be ballot-ed to make a Jury thereof, between the said Parties, according to the Form of the Statute in that Case made and provided, and who are in no wise related, &c. As in the Award of a *Venire* herein before inserted.

*And the Distringas to be altered, Mutatis
Mutandis.*

If there is a View before the Trial, according to the Form of the Statute of the 4th and 5th of Queen Anne, I submit whether this following Entry will not be thought proper for that Purpose, now the Method of impanelling Juries is altered.

*The Form of a Distringas for a View before
a Trial.*

'**GEORGE** the Second, &c. to the Sheriff of *Norfolk*, Greeting. We command you, that you distrain the several Persons mentioned in the Panel hereunto annexed, Jurors summoned into our Court before us, between *A. B.* Plaintiff, and *C. D.* Defendant, by all their Lands and Chattels in your Bailiwick; so that neither they or either of them, or any other Person for them, meddle therewith until you have another Precept therein from us; and that you answer for the Issues of the same to us, so that you have their Bodies before us at *Westminster*, on Wednesday next after fifteen Days from the Feast-Day of *Easter*, or before our Justices appointed to hold the Assizes in your County, if they should come there before, (that is to say) on Wednesday the Twenty-first Day of *March*, at *Thetford* in your County, by Force

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Force of the Statute in that Case made and King's provided; out of which a Jury of the County Bench, may be ballotted for, and made between the said Parties, in an Action of *Trespass upon the Case*, and to hear their Judgment for their many Defaults. And in the mean Time, according to the Form of the Statute in such Case made and provided, six of the Persons named in the said Panel hereto annexed, (that is to say) *A. B. C. D. E. F. G. H. I. K. L. M.* being agreed on by the said Parties to view the Place in Question, (*If the Viewers are not agreed to by the Parties, but appointed by the Master, which I understand to be the proper Officer meant by the said Act for that Purpose*) then say thus, Being appointed by the Court to view the Place in Question. *If they are appointed by the Judge, who is to go that Circuit, which, the Act says, may be done if need be, the Necessity of which may arise in this Manner: If either of the Parties alledges to the Master that which he thinks not a sufficient Reason for his Refusing such Person or Persons to be Viewers, then by a Summons before a Judge, if the Judge on an Attendance for that Purpose conceives, that the Reasons offered against such Viewers were good, he is empowered by this Act to name the Viewers, and then you must say,* Being appointed by *Alexander Denton*, one of our Justices of the Court of Common-Pleas, according to the Form of the Statute in that Case made and provided. Therefore we command you, that you have those six Persons so agreed on, (or appointed as the Case is) at the Place in Question, upon the 8th Day of *March* next, who shall there view the said Place in the Presence of *J. M.* on the Part of the Plaintiff, and *W. E.* on the Part of the Defendant, appointed by our Court before us, to shew the said Place

to

King's Bench. to the said Viewer's; and in what Manner you shall have executed this our Precept, do you signify by a Return thereof to our said Justices, at the said Assizes, remitting to us this our Writ. Witness Robert Lord Raymond, &c.

The Entry of which is as follows.

And the said C. D. by *Henry Crayws* his Attorney, comes and defends the Force, Injury and Damages, and whatsoever else he ought to defend, where and when the Court will consider thereof; and faith he is not guilty of the Trespass above laid to his Charge, in such Manner and Form, as the said A. hath above declared against him; and of this he puts himself upon his Country; and the said A. does likewise the same. Therefore let a Number not less than Forty-eight, nor exceeding Seventy-two, of free and lawful Men of the Body of your said County, come before our Sovereign Lord the King at *Westminster*, on (*the Day of the Return of the Venire*) out of which twelve may be ballotted to make a Jury thereof between the said Parties, according to the Form of the Statute in such Case made and provided; and who neither, *and so forth*, To recognize, *and so forth*, Because as well, *and so forth*. The same Day is given to the said Parties to be there, *and so forth*. At which Day came the said Parties before our Sovereign Lord the King, at *Westminster*, by their said Attornies, and the said Sheriff of the County of *Norfolk*, (that is to say) J. S. Esq; returned the Writ, *to cause the said Jury to appear in all Things served and executed*, together with a Panel of the Names of Jurors, summoned according to the Form of the Statute in that Case made and provided, annexed

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to the said Writ; of which none, *and so forth*. King's
Therefore the Sheriff of the said County is Bench:
commanded, that he distrain the several Per-
sons mentioned in the Panel to a Writ direct-
ed to him for that Purpose, by all their Lands,
and so forth. And that of the Issues, *and so*
forth. That he may have their Bodies before
our Sovereign Lord the King, at *Westminster*,
on Wednesday next after three Weeks from the
Feast-Day of Easter; out of which a Jury of the
County may be balloted, and made between
the said Parties in the said Action, accord-
ing to the Form of the Statute in such Case
made and provided. And in the mean Time;
according to the Form of the Statute in such
Case made and provided, the said Sheriff is
also commanded, that he cause six of the Per-
sons named in the said Writ, (whereby he was
commanded to cause the said Forty-eight
Persons to come before our Sovereign Lord
the King at *Westminster*, at the Day of the
Return of the said Writ) that is to say, *A. B.*
C. D. E. F. G. H. I. K. and L. M. agreed on
by the said Parties to view the Place in Que-
stion, upon the eighth Day of *March* last past;
who should there view the said Place in Que-
stion, in the Presence of *J. M.* and *W. F.* ap-
pointed by this Court of our said Sovereign
Lord the King, to shew the Place to the said
Jurors; and that in what Manner he should
execute that Writ, he should signify to our
said Sovereign Lord the King by a proper
Return thereof. The same Day is given to
the said Parties to be there, *and so forth*. At
which Day came the said Parties by their said
Attornies, before our said Sovereign Lord the
King, and the Sheriff of the said County made
a Return, That by Vertue of the said Writ,
he had caused the said six Jurors named in

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the said Writ, to view the said Place in Question, then and there shewed to them by the said *J. M.* and *W. F.* as by the said Writ he was directed to do, according to the Tenour of the same. And that the remaining Part of the Execution of the said Writ appear'd in the Panel annexed to the said Writ. And thereupon the Jurors of the said Jury, that is to say, the said *A. B. C. D. &c.* being summoned, came, and are impanelled and sworn upon the Jury, to try the Cause between the said Parties, and others, (that is to say) *N. O. P. Q. R. S. W. H. B. M. and C. A.* named in the Panel of the said Writ, by which the Sheriff was commanded to distrain the Jurors, being ballotted, according to the Form of the Statute in that Case made and provided, whose Names are contained in the Panel hereunder written, are impanelled and sworn, who (together with the said other six before impanelled and sworn) to declare the Truth of the within Contents, declare upon their Oaths, &c.

F I N I S.



E. E. S. M.
5/19/63

